



State of Illinois

# PROPERTY TAX APPEAL BOARD

## SYNOPSIS OF REPRESENTATIVE CASES

### DECIDED BY THE BOARD

*During Calendar Year 2013*

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*Executive Director*

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PROPERTY TAX APPEAL BOARD  
Section 16-190(a) of the Property Tax Code  
(35 ILCS 200/16-190(a), Illinois Compiled Statutes)  
Official Rules - Section 1910.76  
Printed by Authority of the State of Illinois

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State of Illinois  
**PROPERTY TAX APPEAL BOARD**

Wm. G. Stratton Office Bldg.  
401 South Spring St., Rm. 402  
Springfield, Illinois 62706  
(T) 217.782.6076  
(F) 217.785.4425  
(TTY) 217.785.4427

**DONALD R. CRIST**  
*Chairman*

**LOUIS G. APOSTOL**  
*Executive Director*

Suburban North Regional Office  
9511 W. Harrison St., Suite LL-54  
Des Plaines, Illinois 60016  
(T) 847.294.4121  
(F) 847.294.4799

**2013 FOREWORD**

In the following pages, representative decisions of the Property Tax Appeal Board are reported. An index is also included. The index is organized by subject matter, and is presented in alphabetical sequence. Section 16-190(a) of the Property Tax Code (35 ILCS 200/16-190(a)) requires the Board to publish a volume of representative cases decided by the Board during that year.

Should the reader wish to become more completely informed about an appeal than is permitted by a reading of this volume, he or she need only access the Property Tax Appeal Board's website at [www.ptab.illinois.gov](http://www.ptab.illinois.gov) and click on the link that says "Appeal Status Inquiry." Access to Board records is addressed in Section 1910.75 of the Official Rules of the Property Tax Appeal Board. Additional Property Tax Appeal Board decisions may also be accessed via the "Appeal Status Inquiry" link.

The reader should note that a docket number is created as follows: the first two digits indicate the assessment year at issue; the digits following the first hyphen identify the particular case; the letter following the second hyphen indicates the kind of property appealed ("R" for residential, "F" for farm property, "C" for commercial property, and "I" for industrial property), and the number which follows the final hyphen indicates the amount of assessed valuation at issue ("1" indicates less than \$100,000 in assessed valuation is at issue, "2" indicates between \$100,000 and \$300,000 is at issue, and "3" indicates \$300,000 or more is at issue). Thus, a docket number might appear as: 03-01234.001-I-3.

The reader should also note that Property Tax Appeal Board appeals are docketed according to the particular appeal form filed by the appellant rather than on the basis of the kind of property that is the subject matter of the appeal. Thus, a property that is actually an income producing or commercial facility might have a letter in the docket number that is inconsistent with the actual property type in the appeal.

The Property Tax Appeal Board anticipates this volume of the 2013 Synopsis will continue to aid in the understanding of the issues confronted by the Board, and the kinds of evidence and documentation that meet with success.

**BOARD MEMBERS**

Michael J. (Mickey) Goral  
*Rockford*

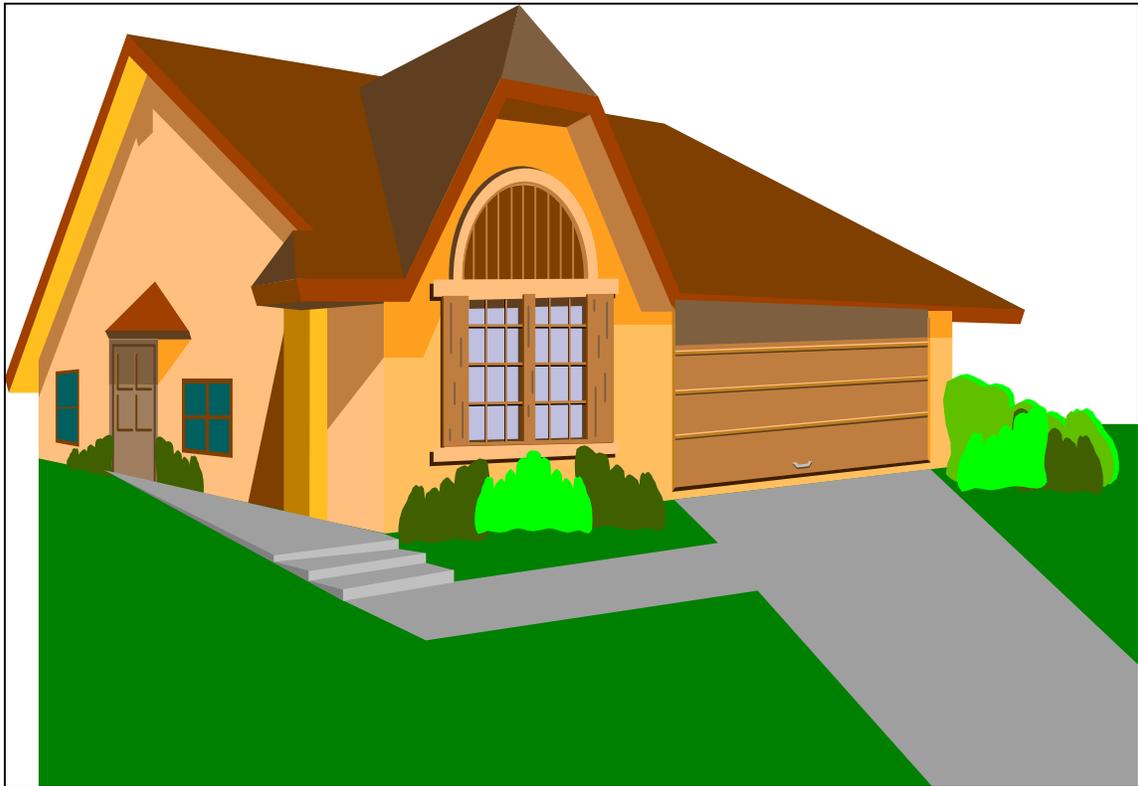
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**PROPERTY TAX APPEAL BOARD**  
**SYNOPSIS OF REPRESENTATIVE CASES**  
**2013 RESIDENTIAL DECISIONS**



**PROPERTY TAX APPEAL BOARD**  
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## 2013 SYNOPSIS – RESIDENTIAL CHAPTER

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### 2013 RESIDENTIAL CHAPTER

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<b>APPELLANT:</b>	<u>Lia Arber</u>
<b>DOCKET NUMBER:</b>	<u>10-04400.001-R-1</u>
<b>DATE DECIDED:</b>	<u>June, 2013</u>
<b>COUNTY:</b>	<u>Lake</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with a 2.5-story single-family dwelling of brick construction that contains approximately 4,804 square feet of living area. The home was built in 1890 and features a full basement that is 80% finished, central air conditioning, two fireplaces, finished attic area and a two-car basement garage. The property is located in the Fort Sheridan development of Highland Park, Moraine Township, Lake County.

The subject property is an owner occupied residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 09-01869.001-R-1. In that appeal the Property Tax Appeal Board rendered a decision lowering the assessment of the subject property to \$225,810 based on the stipulation of the parties.

Both parties agree that the subject dwelling qualified for the 8 year tax assessment freeze program known as the Historic Residence Assessment Freeze Law (35 ILCS 200/10-40 et seq.) of the Property Tax Code. Both parties also agree that the freeze for the subject property was complete as of the 2008 tax year (see also 35 ILCS 200/10-45). Therefore, as the instant appeal concerns the 2010 assessment of the subject property, Section 10-50 of the Property Tax Code as set forth herein is applicable to determining the correct 2010 assessment of the subject property:

Valuation after 8 year valuation period. For the 4 years after the expiration of the 8-year valuation period, the valuation for purposes of computing the assessed valuation shall be as follows:

For the first year, the base year valuation plus 25% of the adjustment in value.

For the second year, the base year valuation plus 50% of the adjustment in value.

For the third year, the base year valuation plus 75% of the adjustment in value.

For the fourth year, the then current fair cash value.

(35 ILCS 200/10-50). There are also definitions specific to the Historic Residence Assessment Freeze Law that are necessary for an understanding of the instant appeal as follows:

(h) "Fair cash value" means the fair cash value of the historic building, determined on the basis of the assessment officer's property record card, representing the value of the property prior to the commencement of rehabilitation without consideration of any reduction reflecting value during the rehabilitation work.

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(i) "Base year valuation" means the fair cash value of the historic building for the year in which the rehabilitation period begins but prior to the commencement of the rehabilitation and does not include any reduction in value during the rehabilitation work.

(j) "Adjustment in value" means the difference for any year between the then current fair cash value and the base year valuation.

(k) "Eight-year valuation period" means the 8 years from the date of the issuance of the certificate of rehabilitation.

(l) "Adjustment valuation period" means the 4 years following the 8 year valuation period.

(35 ILCS 200/10-40(h) through (l)).

The appellant for this 2010 assessment appeal submitted an appraisal to demonstrate the subject was being overvalued.<sup>1</sup> The appraisal reported an estimated value under the cost approach of \$903,600 and an estimated value under the sales comparison approach of \$900,000. Based on the foregoing evidence, the appellant requested a reduction in the subject's assessment to \$205,196 which would reflect a market value of approximately \$615,588.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final 2010 assessment of the subject property totaling \$270,988 was disclosed.

In support of the subject's current 2010 assessment the board of review submitted a two-page letter along with additional documentation discussing various statutory provisions of the Property Tax Code, including, "the Illinois Historic Preservation Agency's Historic Property Tax Assessment Freeze" program (35 ILCS 200/10-40 through 10-85). According to the board of review, the subject property's assessment was "frozen" at \$118,320 for a period of eight years beginning in tax year 2000. After the eight year period, the subject's assessment was incrementally increased at 25% intervals to bring it to current fair cash value pursuant to Section 10-50 (35 ILCS 200/10-50).

Next, the board of review expounded upon the various calculations that lead to the original 2010 published assessment of the subject property of \$310,348. As 2010 is the third year after the eight year period, the subject's assessment "was equal to the base plus 75% of the difference between the base and the current value (if the subject was not part of the program)." The board of review presented the following calculations:

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<sup>1</sup> The original legal-sized appraisal report was photocopied onto 8.5" x 11" paper in a manner that eliminated essential information from the report such as the appraiser's value conclusion and date of valuation.

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Base year assessment - \$118,320  
2010 value (if not part of the program) = \$1,123,184 MV or \$374,357 AV  
\$374,357 - \$118,320 (base year valuation) = \$256,037 difference  
\$256,037 x 75% = \$192,028  
\$192,028 + \$118,320 = \$310,348 (original published 2010 assessment)

Second, the board of review acknowledged the existence of the stipulation in assessment for the subject property that was executed in Docket No. 09-01869.001-R-1 for \$225,810. The board of review also reported that 2009 and 2010 are within the same general assessment period for non-farm property in Lake County (35 ILCS 200/9-215). The board of review also contends the subject property is owner occupied and has not recently sold.

The board of review then states that the 2009 assessment was year two after the eight year "frozen" period and prior to the 2009 stipulated assessment reduction, the subject's assessment was based upon a fair cash value of \$1,134,530. The 2009 stipulated assessment was based upon a fair cash value of \$1,000,000. Then, the board of review displayed the calculations which resulted in the 2009 stipulation:

Base year assessment - \$118,320  
2009 stipulated value (if not part of the program) = \$1,000,000 MV or \$333,300  
AV  
\$333,300 - \$118,320 (base year valuation) = \$214,980 difference  
\$214,980 x 50% = \$107,490  
\$107,490 + \$118,320 = \$225,810 (2009 stipulated assessment)

Based upon the foregoing, including the 2009 decision of the Property Tax Appeal Board, the Lake County Board of Review contends the correct assessment of the subject property for 2010 should be \$279,555 which would be calculated as follows:

Base year assessment - \$118,320  
2009 stipulated value carried forward = \$1,000,000 MV or \$333,300 AV  
\$333,300 - \$118,320 (base year valuation) = \$214,980 difference  
\$214,980 x 75% = \$161,235  
\$161,235 + \$118,320 = \$279,555

Next, the board of review states that it sought to correct the subject's 2010 assessment with a Certificate of Error to adhere to the provisions of Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) which reduced the assessment to \$270,988 (without application of the 1.0199 State of Illinois equalization factor that was issued for Lake County for 2010). "The Certificate of Error was filed and processed without the knowledge that the property owner had filed with the PTAB for tax year 2010 on 8/22/2011." In summary, the Certificate of Error reduced the subject's correct assessment below the \$279,555 assessment which the Lake County Board of Review "now believes to be the correct assessment for tax year 2010." Thus, the board of review contends that no further reduction in the subject's assessment is warranted.

In written rebuttal, the appellant outlined the history of the historic assessment freeze and the first assessment challenge that occurred in 2008 noting that the "taxes seemed reasonable to us despite

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the inflated assessed market value." Next, for 2009 the appellant pursued an appeal before PTAB which resulted in a stipulated assessment of \$225,810. The appellant contends that this 2009 assessment included a verbal agreement with a representative of the Lake County assessor's office "that the 2010 assessed value would be adjusted to less than \$950,000."

Next, the appellant contends that a lesser property tax refund was received from Lake County and resulted in the filing of this appeal. In rebuttal, the appellant wrote:

[w]e submitted an appraisal of the fair market value of our property . . . which was completed by a professional assessor [*sic*]. Our house was assessed at \$850,000 in 2009 and \$750,000 in 2011 by professional assessor [*sic*] from the Bank of America. These numbers effectively reflect the fair market value of our property.

(Rebuttal, pg. 2). The appellant argues that the base value formula presented by the board of review fails to consider the steady decline of property values in Illinois since their peak in 2007. The appellant cites to statistics from the Federal Housing Finance Agency to support that values have declined. Next, the appellant cited to the Zillow Home Value Index that from 2009 to 2010 there was an 8% decrease in values in Chicago.

Based upon these arguments, the appellant contends the fair market value of the subject property has decreased to \$900,000 for 2010. The appellant then presented the following calculations:

Base year assessment – 118,320  
2010 adjusted value - \$900,000 MV or \$299,700 AV  
 $299,700 - 118,320 = 181,380$   
 $181,380 \times 75\% = \$136,035$   
 $136,035 + 118,320 = \$254,355$

In conclusion and based upon the foregoing argument and calculations, the appellant requested a total assessment of \$254,355 for the subject property.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The only current evidence of market value was submitted by the appellant in the form of an appraisal in which the value conclusion was not legible. However, the appellant asserted the appraiser opined a market value of \$900,000 for the subject property which would be identical to the conclusion presented as a result of the sales comparison approach to value. Therefore, the Board concludes that the appellant's appraisal reflects an estimated market value of the subject property of \$900,000.

Applying the provisions of Section 10-50 of the Historic Residence Assessment Freeze Law, the correct 2010 assessment of the subject property would be as follows:

Base year assessment - \$118,320 reflects an estimated market value at the statutory level of assessment of 33.33% or \$354,995 as a base year valuation.

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The adjustment in value = current fair cash value – base year valuation or  
 $\$900,000 - \$354,995 = \$554,005$ .

75% of the adjustment in value or  $\$554,005 \times 75\% = \$408,754$ .

Base year valuation plus 75% of the adjustment in value =  $\$354,995 + \$408,754$   
 $= \$763,749 \times 33.33\% = \$254,558$  as the third year assessment of the subject property under  
Section 10-50 of the Property Tax Code (35 ILCS 200/10-50).

Based upon the foregoing statutory provisions and the facts, the Property Tax Appeal Board finds  
that the subject property has a 2010 total assessment of \$254,558.

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<b>APPELLANT:</b>	<u>James Blaser</u>
<b>DOCKET NUMBER:</b>	<u>11-00547.001-R-1</u>
<b>DATE DECIDED:</b>	<u>November, 2013</u>
<b>COUNTY:</b>	<u>Winnebago</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with a two-story dwelling of frame construction containing 2,424 square feet of living area. The dwelling was constructed in 1991. Features of the home include a full unfinished basement, central air conditioning, a fireplace and an attached two-car garage. The property has a 10,066 square foot site and is located in Rockford, Rockford Township, Winnebago County.

The appellant's appeal is based on overvaluation. Attached to the appeal is a copy of the Final Decision issued by the Winnebago County Board of Review on January 17, 2012 regarding the 2011 assessment of the subject property with a reduction in assessment "Mkt Value change" and a final assessment of \$54,842.

In support of the overvaluation argument, the appellant submitted information on four comparable sales located within eight blocks of the subject property. The comparables are described as two-story dwellings of frame or frame and masonry construction that range in size from 2,392 to 2,468 square feet of living area. The dwellings range in age from 8 to 19 years old. Comparables #1, #2 and #3 have the same neighborhood code as the subject property. Features of the comparables include a full basement, one of which includes finished area. Each home has central air conditioning, a fireplace and a garage of 440 or 720 square feet of building area. The comparables have sites ranging in size from 10,800 to 11,340 square feet of land area. The comparables sold from August 2010 to July 2011 for prices ranging from \$125,000 to \$160,000 or from \$50.65 to \$65.68 per square foot of living area, including land. The appellant reported the average of these four sales was \$59 per square foot of living area, including land, rounded.

Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$47,672 which would reflect a market value of approximately \$143,016 or \$59.00 per square foot of living area, including land.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$54,842 was disclosed. The subject's assessment reflects a market value of \$167,303 or \$69.02 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for Winnebago County of 32.78% as determined by the Illinois Department of Revenue.

The board of review presented a two-page letter and evidence gathered by Cindy Onley and Brian Wilson, Deputy Assessors with the Rockford Township Assessor's Office. As an initial jurisdictional matter, the assessor noted that the appellant failed to appear before the Winnebago County Board of Review and a "Revised Final Decision" was issued on January 19, 2012 noting the "Reason" for the assessment change was "Fail to Appear – Hearing." A copy of said

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"Revised" Final Decision was attached displaying the board of review revised assessed total of \$54,842.

As to the appellant's suggested comparable sales, the assessor noted that two sales were from the subject's market neighborhood and two were from "different market neighborhoods." Appellant's comparable #1 has some basement finish and is a "SW/FINANCIAL" deed. Appellant's comparable #4 is a "SW/GOVERNMENT-BANK-REO."

In support of the subject's estimated market value based on its assessment, the assessor presented information on four comparable sales located in the "subject's market neighborhood." The comparables are located from 2 blocks to 2-miles from the subject property. Each has the same neighborhood code as the subject property. The comparables are improved with two-story dwellings of frame construction that range in size from 1,932 to 2,454 square feet of living area. The dwellings range in age from 16 to 20 years old. Features of the comparables include a full basement, two of which include finished areas. Each home has central air conditioning, a fireplace and a garage ranging in size from 511 to 680 square feet of building area. The comparables have sites ranging in size from 12,067 to 13,469 square feet of land area. The comparables sold from March to December 2010 for prices ranging from \$163,500 to \$166,000 or from \$67.64 to \$84.63 per square foot of living area, including land.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

As to the jurisdictional issue raised by the township assessor, it is first noted that pursuant to Section 1910.40(b), if a board of review objects to jurisdiction of the Property Tax Appeal Board, such dismissal request is to be filed before submission of the Board of Review Notes on Appeal and accompanying documentation. (86 Ill.Admin.Code §1910.40(b)). In this case, the assessor's argument for dismissal of this appeal was attached to the Board of Review Notes on Appeal and therefore was untimely raised.

As a further basis to deny the request on the merits, the Property Tax Appeal Board finds that the Winnebago County Board of Review issued a "Revised" Final Decision dated January 19, 2012 concerning the 2011 assessment of parcel number 12-03-378-005 stating, in pertinent part:

Reason: Fail to Appear - Hearing

It is further noted this Notice of Findings from the board of review as the last paragraph states, in pertinent part:

You may appeal this decision to the Illinois Property Tax Appeal Board by filing a petition for review . . . within 30 days after this notice is mailed to you or your agent, or is personally served on you or your agent. . . .

The Property Tax Code (35 ILCS 200/16-160) provides as follows:

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In any appeal where the board of review . . . has given written notice of the hearing to the taxpayer 30 days before the hearing, failure to appear at the board of review . . . hearing shall be grounds for dismissal of the appeal unless a continuance is granted to the taxpayer. **If an appeal is dismissed for failure to appear at a board of review . . . hearing**, the Property Tax Appeal Board shall have no jurisdiction to hear any subsequent appeal on that taxpayer's complaint. [Emphasis added.]

The Final Decision issued by the Winnebago County Board of Review to the appellant was not a dismissal as referenced above. The Property Tax Appeal Board finds the following provision of Section 16-160 applicable to the circumstances shown in the record:

. . . any taxpayer dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes . . . may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review.

Based upon the specific notice issued by the Winnebago County Board of Review and Section 16-160 of the Property Tax Code, the Property Tax Appeal Board finds it has jurisdiction over the instant appeal as the appeal was postmarked on February 1, 2012 which is within 30 days of the "revised" notice dated January 19, 2012. Thus, the township assessor's request to dismiss the appeal is denied.

As to the merits of this appeal, the appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The parties submitted eight comparable sales to support their respective positions before the Property Tax Appeal Board. The Board has given less weight to appellant's comparable #4 as this dwelling is much newer than the subject and the Board has also given reduced weight to board of review comparable #4 as this home is smaller than the subject and other comparables presented by both parties. The Board finds the remaining six comparables submitted by both parties were similar to the subject in location, size, style, exterior construction, features, age and/or land area

Upon further examining these six sales, the Board finds appellant's comparables #1 and #2 and board of review's comparables #1 and #2 are most similar to the subject in location, age, dwelling size and features. These four most similar properties received the most weight in the Board's analysis and sold for prices ranging from \$125,000 to \$166,000 or from \$50.65 to \$68.20 per square foot of living area, including land. The subject's assessment reflects a market value of

## **2013 SYNOPSIS – RESIDENTIAL CHAPTER**

\$167,303 or \$69.02 per square foot of living area, including land, which is above the range of these most similar comparables both in terms of overall value and on a per-square-foot basis. Moreover, the Board finds the subject's slightly higher value is not justified when giving due consideration to the most similarly sized dwellings and particular emphasis to board of review comparable #1 that is very similar to the subject dwelling.

Based on this record the Board finds the appellant did demonstrate by a preponderance of the evidence that the subject was overvalued and a slight reduction in the subject's assessment is justified.

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<b>APPELLANT:</b>	<b>Thomas Bono</b>
<b>DOCKET NUMBER:</b>	<b>08-30028.001-R-1</b>
<b>DATE DECIDED:</b>	<b>December, 2013</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property is improved with a two-story single family dwelling of masonry construction containing 2,856 square feet of living area. The dwelling is approximately 45 years old. Features of the home include a full unfinished basement, central air conditioning, one fireplace and a 2.5-car garage. The property has a 9,200 square foot site and is located in River Forest, River Forest Township, Cook County.

The appellant is challenging the subject's land assessment for the 2008 tax year based on assessment inequity. The appellant submitted information on four comparable properties that each had the same classification code and neighborhood code and street address as the subject property. The comparables had sites ranging in size from 9,457 to 12,267 square feet of land area. The comparables had land assessments ranging from \$12,104 to \$15,701 or \$1.28 per square foot of land area. The comparables had improvement assessments ranging from \$53,480 to \$67,320 and total assessments ranging from \$64,107 to \$81,451. The subject property has a total assessment of \$75,784 and a land assessment of \$27,232 or \$2.96 per square foot of land area. Based on this evidence, the appellant requested a reduction in the subject's land assessment to \$11,776.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$75,784 or \$26.54 per square foot of living area, including land, was disclosed. The subject property has a land assessment of \$27,232 or \$2.96 per square foot of land area and an improvement assessment of \$48,552 or \$17.00 per square foot of living area. The board of review presented descriptions and assessment information on four comparable properties improved with two-story dwellings of masonry construction that range in size from 2,730 to 3,266 square feet of living area. The dwellings ranged in age from 43 to 62 years old. Each comparable has the same classification code and neighborhood code as the subject property. One comparable is located on the same street and within the same block as the subject property. Each comparable has a full unfinished basement, one fireplace and a 2-car or 2.5-car garage. Three comparables also have central air conditioning. The properties have sites of either 8,750 or 9,200 square feet of land area. The comparables have land assessments of either \$25,900 or \$27,232 or \$2.96 per square foot of land area. The same comparables have improvement assessments that range from \$50,614 to \$54,321 or from \$16.63 to \$19.24 per square foot of living area and total assessments ranging from \$77,846 to \$81,281 or from \$24.56 to \$29.06 per square foot of living area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal the appellant asserted the board of review failed to address the land equity argument.

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After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends unequal treatment in the subject's land assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The Board initially finds that although the appellant asserts he is contesting the land assessment only, the appellant cannot limit the Property Tax Appeal Board's review to the land assessment. An appeal of an assessment to the Property Tax Appeal Board from a decision of the board of review includes both the land and the improvements. Showplace Theatre Co. v. Property Tax Appeal Board, 145 Ill.App.3d 774, 495 N.E.2d 1312, 99 Ill.Dec. 577 (2<sup>nd</sup> Dist. 1986).

The record contains assessment information on eight comparables submitted by the parties. The eight comparables had the same classification code and neighborhood code as the subject property. These properties had sites ranging in size from 8,750 to 12,267 square feet of land area. The land assessments ranged from \$12,104 to \$27,232 and either \$1.28 or \$2.96 per square foot of land area. The subject's land assessment of \$2.96 per square foot of land area is identical to four of the comparables in the record.

Significantly, the Board finds the eight comparables had total assessments ranging from \$64,107 to \$81,451. The subject's total assessment of \$75,784 falls within this range. The board of review provided additional descriptive information with respect to its comparables disclosing that comparables #1, #2 and #3 were improved with dwellings similar to the subject in style, construction, size, age and features. These three comparables had identical land assessments as the subject and total assessments ranging from \$77,846 to \$81,281 or from \$28.23 to \$29.06 per square foot of living area, including land. The subject's total assessment of \$75,784 or \$26.54 per square foot of living area, including land, is below this range. Based on this record the Board finds the appellant did not demonstrate with clear and convincing evidence that the subject property was inequitably assessed and a reduction in the subject's assessment is not justified.

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<b>APPELLANT:</b>	<u>Alling C. Brown</u>
<b>DOCKET NUMBER:</b>	<u>10-02973.001-R-3</u>
<b>DATE DECIDED:</b>	<u>July, 2013</u>
<b>COUNTY:</b>	<u>Lake</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of an owner occupied residential property located in Shields Township, Lake County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board arguing the subject property was both overvalued and inequitably assessed. In support of these claims, the appellant submitted two analyses identifying six suggested comparables. Based on this evidence, the appellant requested the subject's assessment be reduced to \$291,130 from \$669,219.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$669,219 was disclosed. The board of review's evidence disclosed the subject property is an owner occupied residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 09-01274.001-R-3. In that appeal, the Property Tax Appeal Board rendered a decision reducing the subject's assessment to \$730,828 based on the evidence submitted by the parties.

The evidence also shows the board of review lowered the subject's 2010 final assessment to reflect the Property Tax Appeal Board's 2009 decision plus application of the Shields Township equalization factor of .9157. ( $\$730,828 \times .9157 = \$669,219$ ). Based on this evidence, the board of review requested confirmation of the subject's assessment.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds no change in the subject's assessment is warranted.

The appellant argued the subject property was inequitably assessed and overvalued. However, the Property Tax Appeal Board finds the subject property was the subject matter of an appeal the prior assessment year under Docket Number 09-01274.001-R-3. In that appeal, the Property Tax Appeal Board rendered decision lowering the assessment of the subject property based on the evidence submitted by the parties. The evidence further indicates the subject parcel is an owner occupied residential property. Section 16-185 of the Property Tax Code provides in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the

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Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185)

Based on this statutory language, the Board finds its 2009 assessment decision shall be carried forward to the subsequent assessment year of the same general assessment period plus annual application of equalization factor. The record contains no evidence indicating the subject property sold in an arm's-length transaction subsequent to the Board's decision or that the assessment year in question is in a different general assessment period. The Board finds the subject's final assessment for the 2010 assessment year, as calculated by the board of review, follows the statutory directives outlined in Section 16-185 of the Property Tax Code. (35 ILCS 200/16-185). Therefore, the Board finds no reduction in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<u>Martin Cosgrave</u>
<b>DOCKET NUMBER:</b>	<u>07-23165.001-R-1 thru 07-23165.003-R-1</u>
<b>DATE DECIDED:</b>	<u>July, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of three parcels of land with improvements located thereon. The appellant, via counsel, argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

In support of this argument the appellant submitted a narrative appraisal estimating the market value for two of the parcels and their improvements at \$380,000 as of January 1, 2007. The appraisal was undertaken by Rufino Arroyo and George K. Stamas of Meridian Appraisal and Consulting Group, Ltd. The appraisal indicates the appraisers are State of Illinois certified general appraisers. In estimating the market value of the subject property the appraisal utilized the sales comparison approach to value. The appraisal indicates that the cost and income approaches to value, both customary methods of valuation, were omitted at the specific request of the client. In addition, the appraisers indicate in the appraisal the assumption that the real estate taxes will be reduced.

The report stated that an inspection of the property was made on June 15, 2009. The appraisal describes these two parcels of land totaling 7,566 square feet and improved with a mixed-use building. The appraisal further describes the subject as a two-story, masonry building built in 1893 and 1942. The color photographs in the appraisal of the exterior of the building show two distinct buildings adjacent to one another. There are no interior photographs. The appraisal breaks down the building as one commercial unit used as a pub and four apartment units. The appraisal finds the subject's highest and best use as improved is its current use.

Under the sales comparison approach, the appraisers analyzed the sales of five masonry, two or three-story, mixed-use buildings located within the subject's market. The properties range in age from 78 to 104 years and in size from 5,760 to 15,919 square feet of building area. The appraisal does not indicate how many residential units each property contains. The comparables sold from April 2005 to December 2007 for prices ranging from \$150,000 to \$635,000, or from \$26.04 to \$44.64 per square foot of building area, including land.

The appraisers adjusted each of the comparables for several factors. The appraisal indicates differences in economic characteristics requiring adjustments that include the attributes of the property such as operating expenses, quality of management, tenant mix, rent concessions, lease expiration dates, renewal options, and lease terms. The appraisal did not include any information on these elements for the subject or the comparables nor were any adjustments made based on these elements. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value for these two parcels under the sales comparison approach of \$42.50 per square foot of building area or \$380,000, rounded.

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As to the third parcel, the appellant submitted a brief arguing that this parcel is misclassified as a commercial property and should be classified as a mixed-use property. In addition, the appellant argues the subject was vacant during 2007 and that the improvement assessment should be reduced to reflect this vacancy.

In support of the vacancy argument, the appellant submitted an affidavit from Martin Lynch, the agent for the owner, attesting that the parcel is a 1,200 square foot building that was 100% vacant in 2007. The affidavit reads that this property was leased to a flower shop and then they abandoned the building without removing their equipment or paying rent in 2007. The property was advertised for rent after it was abandoned. Black and white photographs showing the empty interior space were included.

In support of the classification change, the appellant submitted an affidavit from the same agent attesting that the property is one-story, contains less than 6 units and 20,000 square feet, and contains one commercial unit and one residential apartment. Black and white photographs show a small kitchenette, a sink, a toilet, and a shower base. Based on this evidence, the appellant requests a reduction in the assessment for all three parcels.

The board of review submitted its "Board of Review Notes on Appeal" for the one parcel classified as residential, 15-34-432-002-0000, wherein this parcel's total assessment of \$64,080 was disclosed. The remaining two parcels, which according to the appellant, are classified as commercial properties have total assessments of \$68,231 for parcel 15-34-432-001-0000 and \$43,320 for parcel 15-34-432-003-0000. These assessments reflect market values of: \$638,247 for parcel 15-34-432-002-0000 when applying the Illinois Department of Revenue's three-year median level of assessment of 10.04% for class 2 properties; \$179,555 for parcel 15-34-432-001-0000 when applying the 38% Cook County Ordinance level of assessment for class 5a commercial property; and \$114,000 for parcel 15-34-432-003-000 when applying the 38% Cook County Ordinance level of assessment for class 5a commercial property.

In support of the assessment for parcel 15-34-432-002-0000 the board of review submitted descriptions and assessment information on four properties suggested as comparable. These properties are each described as two-story, masonry, mixed-use dwellings with one commercial unit and four residential units. The properties range: in age from 91 to 117 years; in size from 2,208 to 3,190 square feet of living area; and in improvement assessments from \$8.24 to \$10.39 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. After submission of evidence, the appellant waived his right to a hearing.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)).

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As to the third parcel, 15-34-432-003-0000, the Board finds that the appellant failed to submit sufficient evidence to show that this parcel is a mixed-use building. The agent's affidavit attests that the subject is a one-story building which was leased to one tenant, a flower shop. The second affidavit contradicts this by attesting that the subject has two units. The photographs do not show a separate living area and do not include any pictures of a bedroom. A commercial property may contain a kitchen area and the appellant failed to show that this was not the case for this property. Therefore, the Board finds the subject is properly classified by the board of review as a commercial property.

The appellant also submitted documentation showing the vacancy of this parcel. The Board gives the appellant's argument little weight. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

[I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Id. at 431.

Actual expenses and income based on vacancy can be useful when shown that they are reflective of the market. Although the appellant's attorney made this argument, the appellant did not demonstrate through an expert in real estate valuation that the subject's actual income and expenses are reflective of the market. To demonstrate or estimate the subject's market value using income, one must establish, through the use of market data, the market rent, vacancy and collection losses, and expenses to arrive at a net operating income reflective of the market and the property's capacity for earning income. The appellant did not provide such evidence and, therefore, the Board gives this argument no weight and finds that a reduction based on market value for this parcel is not warranted.

In determining the fair market value of the remaining two parcels the Board finds the appellant's appraisal flawed. The appraisers did not perform the income and cost approaches to value although they acknowledge these are viable approaches and the subject is an income producing property. The appraisers specifically excluded these approaches at the request of the client, not based on their own determination. In addition, the inspection of the property was conducted almost two and one-half years after the lien date and the appraisal fails to indicate if these parcels were in the same condition on the lien date.

The Board also finds that appraisal is flawed in describing the parcels and providing supporting photographs. The appraisers indicate the property is one building; however, the photographs show two buildings adjoining each other. The appraisers do not explain this nor do they submit interior photographs to clarify how the exterior reflects a different appearance than what is actually there.

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The Board finds the cost approach would have laid out the elements of construction and further described the characteristics of these parcels and whether they are two distinct buildings or one building. The board of review has listed these parcels as two distinct buildings based on their county classification. The appellant has not met the burden of showing that the subject is one building; the appraisal is unclear, does not show that this is one building as opposed to two adjacent buildings owned by one person, and does not support a class change.

In addition, the Board finds that because the subject is an income producing property, an income approach should have been done to provide support for the sales comparison approach; especially since the sales comparison approach is missing data elements.

In the sales comparison approach, the appraisers failed to fully describe the comparables by indicating how many commercial units and how many residential units were contained in each property. There were no adjustments made to the comparables based on these characteristics. In addition, the appraisers indicate that an important factor in the adjustment process is economic characteristics such as tenant mix, lease terms, renewal options, and lease provisions; however the appraisal does not provide this information on the subject parcels or the suggested comparables and no adjustments are made for these characteristics.

Therefore, the Board finds that the appellant failed to submit complete, accurate, and credible evidence to show, by a preponderance of this evidence, that the subject property is overvalued and the Board finds a reduction in the subject's assessment is not warranted.

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<b>APPELLANT:</b>	<u>Melissa Daab</u>
<b>DOCKET NUMBER:</b>	<u>10-04171.001-R-1</u>
<b>DATE DECIDED:</b>	<u>July, 2013</u>
<b>COUNTY:</b>	<u>Monroe</u>
<b>RESULT:</b>	<u>No Change</u>

The subject parcel consists of a fourteen foot by twenty foot wooden shed that was constructed off-site and delivered to the subject property on a flatbed truck. The subject property is located in Columbia, Monroe County, Illinois.

The appellant contests the assessment placed on the shed and contends the shed should not be classified and assessed as real estate because the structure is not resting in whole on a permanent foundation. In support of this argument, the appellant provided a brief with her contention and two color photographs depicting the shed and one of the piers. In the brief, the appellant reported that the shed is portable as it is resting on concrete piers and there is no utility service to the shed.

Based on this evidence and the argument that the shed is personal property and not subject to real estate assessment and taxation, the appellant requested that the Property Tax Appeal Board reduce the subject's improvement assessment to \$0 and make no change to the land assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject property's final assessment of \$9,460 was disclosed. The subject has an improvement assessment of \$910.

In response to the appellant's legal argument that a portable building should not be taxable as real estate, the board of review submitted a letter prepared by Marge Francois which stated in pertinent part:

. . . it has been the policy in Monroe County to tax portable buildings.

Based on this policy, the board of review requested confirmation of the subject's improvement assessment.

In written rebuttal, the appellant contended "the State of Illinois does not tax personal property and it is unjust of Monroe County to arbitrarily assess personal property."

After reviewing the evidence and considering the record, the Property Tax Appeal Board finds it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds based on the statutory definition of real property the subject shed is real property which is subject to ad valorem taxation.

The appellant argued that the shed on the subject property was improperly classified and assessed as real estate. The appellant argued the shed, which is not permanently affixed to the land, should be considered personal property which is exempt from assessment and not taxed as real estate. The appellant further contended that the shed is portable, thereby inferring that it

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could be removed at any time. The Board finds that these facts do not alter the fact that the subject shed is real property.

The board of review contends the subject shed has been treated under "the policy in Monroe County to tax portable buildings." Therefore, the board of review contends the shed should be classified and assessed as real property.

Illinois' system of taxing real property is founded on the Property Tax Code. (35 ILCS 200/1-1 et seq.) Section 1-130 of the Property Tax Code defines real property in part as:

The land itself, with all things contained therein, and also buildings, structures and improvements, and other permanent fixtures thereon, . . . (35 ILCS 200/1-130).<sup>1</sup>

In light of the foregoing definition, the Property Tax Appeal Board finds the subject shed was correctly classified and assessed as real property.

The Property Tax Appeal Board finds the parties are in agreement that the land is to be classified and assessed as real property and there is no dispute raised with regard to the land assessment. The parties disagree with respect to the classification and assessment of the shed, which measures 280 square feet, as real property. Thus, the sole issue before this Board is whether the shed is to be classified and assessed as real property.

In Ayrshire Coal Company v. Property Tax Appeal Board, 19 Ill.App.3d 41 (3<sup>rd</sup> Dist. 1974), the court addressed the issue of distinguishing between real and personal property. In determining the property classification of heavy machinery and equipment and whether they were annexed to real estate, the court held:

. . . [p]ersons dealing with land and improvements thereon may consider a building thereon as personalty for their purposes, but such treatment as between individuals, does not change essential characteristics of building as realty. Id. at 44-45.

The court emphasized that an examination of the item, not the contractual language or booking practices, should establish the classification of an item. The court in Ayrshire further wrote, "[a] structure has been defined in the broad sense as any construction or piece of work composed of parts joined together in some definite manner." Id. at 45. In addition, the court noted:

A building has been defined as a fabric, Structure, or edifice, such as a house, church, shop, or the like, designed for the habitation of men or animals or For the shelter of property. [Capitalization as shown; citation omitted.] Id. at 45.

In the case of In re Hutchens, 34 Ill.App.3d 1039 (4<sup>th</sup> Dist. 1976), the court noted that the trial court held that:

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<sup>1</sup> The Property Tax Appeal Board recognizes that this provision was modified as of January 1, 2011. As this is a 2010 assessment appeal, however, the previous provision prior to P.A. 96-1477 is applicable.

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. . . the manner of the placement of the cabin on blocks and a provision of the lease for plumbing connections between the cabin and a septic tank and a well sufficiently attached the cabin to the land to 'become a part of it.' Id. at 1040-1041.

On appeal, the Fourth District Appellate Court held that as far as property taxes are concerned, the finding of the trial court that the cabin was part of the real estate was not contrary to the manifest weight of the evidence.

After considering the evidence and record including the photographs of the subject shed, the Board finds the shed is a "building" or a "structure" as defined in Section 1-130 of the Property Tax Code (35 ILCS 200/1-130). Thus, based on this record, the Board finds the shed is real property and may be assessed as such regardless of its foundation.<sup>2</sup>

In conclusion, the Property Tax Appeal Board finds the subject shed is properly classified as assessable real property and the appellant made no other challenge to the assessment of the shed.

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<sup>2</sup> The instant case is distinguishable from those cases where the structure is identified as a vehicle or similar portable structure such that it can be classified based on its physical foundation pursuant to the Property Tax Code. See Lee County Board of Review v. Property Tax Appeal Board, 278 Ill.App.3d 711 (2<sup>nd</sup> Dist. 1996).

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<b>APPELLANT:</b>	<u>Ned Dikmen</u>
<b>DOCKET NUMBER:</b>	<u>10-35278.001-R-1</u>
<b>DATE DECIDED:</b>	<u>September, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with two, row house style apartment buildings of masonry exterior construction that were built in approximately 1923. The buildings contain 2,885 and 2,675 square feet of building area, respectively. The subject property is not owner occupied. The subject property is located in North Chicago Township, Cook County.

The appellant contends overvaluation as the basis of the appeal. In support of this argument, the appellant submitted an appraisal estimating the subject property has a market value of \$1,125,000 as of January 1, 2009, using the three traditional approaches to value. The appellant's evidence further disclosed the subject property was the subject matter of an appeal before the Property Tax Appeal Board the prior assessment year under Docket Number 09-33068.001-R-1. In that appeal, the Property Tax Appeal Board issued a decision reducing the subject's assessment to \$112,500. Based on this evidence the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$112,499 was disclosed. The subject's assessment reflects an estimated market value of \$1,258,378 when applying the 2010 three-year median level of assessment for Class 2 property under the Cook County Real Property Assessment Classification Ordinance of 8.94%. The board of review requested the Property Tax Appeal Board "rollover" its 2009 decision as applied under Docket Number 09-33068.001-R-1 for a total assessment of \$112,500, which represents a \$1 assessment increase.

The appellant was notified of this suggested agreement and given thirty (30) days to respond if the offer was not acceptable. The appellant did not respond to the Property Tax Appeal Board by the established deadline.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is justified.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3rd Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

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The Board finds the best evidence of market value to be the appraisal of the subject property submitted by the appellant for \$1,125,000. The subject's assessment reflects an estimated market value of \$1,258,378, which is greater than the appraisal submitted by the appellant. Therefore, a reduction in the subject's assessment is warranted. Since fair market value has been established, the 2010 three-year median level of assessment for Class 2 property under the Cook County Real Property Assessment Classification Ordinance of 8.94% shall apply. (86 Ill.Admin.Code §1910.50(c)(2)(A)).

The Property Tax Appeal Board further finds the board of review's request to "rollover" the subject's reduced assessment from the Board's prior year's decision under Docket Number 09-33068.001-R-1 to be misplaced. In the 2009 appeal, the Board reduced the subject's assessment to \$112,500. The Board takes notice of the relevant provisions outlined in Section 16-185 of the Property Tax Code (35 ILCS 200/16-185), which provides in pertinent part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a **residence occupied by the owner is situated** (Emphasis Added), such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185).

The Property Tax Appeal Board finds that its prior year's decision should not be carried forward to the subsequent assessment year. The Board finds the subject parcel in this appeal consists of a multi-family residence that is not occupied by the owner. Since the subject property is not owner occupied, the subject's 2009 reduced assessment issued by this Board does not "rollover" or is not to be carried forward to the subsequent assessment year pursuant to the dictates of section 16-185 of the Property Tax Code. (35 ILCS 200/16-185).

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<b>APPELLANT:</b>	<u>Drew Ellis</u>
<b>DOCKET NUMBER:</b>	<u>10-03589.001-R-1</u>
<b>DATE DECIDED:</b>	<u>September, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of a two-story frame dwelling that contains 2,404 square feet of living area. The dwelling was constructed in 1967. Features include a concrete slab foundation<sup>1</sup>, central air conditioning, a fireplace and a 440 square foot attached garage. The subject dwelling is situated on a 20,250 square foot lot. The subject property is located in Milton Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation as the basis of the appeal. In support of this argument, the appellant submitted a market value consulting report prepared by Chris C. Pheneger of Barron Corporate Tax Solutions (Barron). Pheneger estimated the subject property had a market value of \$415,000 or \$162.63 per square foot of living area including land as of January 1, 2010.

Pheneger was called as the appellant's witness. He has a degree in Business Administration from North Park University, Chicago, and holds a Certified Member of the Institute (CMI) designation from the Institute for Professionals in Taxation. During qualification of the witness, Pheneger testified he is not a licensed appraiser in the State of Illinois. He agreed that he had developed an "opinion" of value for the subject property.<sup>2</sup> He testified he is qualified to render an opinion of value for the subject property. Based on his experience, he "pulled comps" to evaluate the subject property. Pheneger acknowledged through testimony any fee for services rendered is contingent based upon any tax saving on a percentage basis. Pheneger testified if we (Barron's) lose, we get nothing. After discussing the Real Estate Appraisal Licensing Act of 2002 (225 ILCS 458/1-10) Pheneger did not believe he had prepared an appraisal and did not believe he was acting as an appraiser. Page 2 of the consulting report states in part: "Barron Corporate Tax Solutions, Ltd., is not performing services that constitute appraisal practice . . . but is providing consulting services which is not under the purview of the Uniform Standards of [Professional] Appraisal Practice (USPAP)."

Pheneger prepared an analysis of six suggested comparable sales described as being located in the Glencoe Area of Wheaton, Illinois. The analysis describes the comparables as two-story dwellings of unknown exterior construction that were built from 1959 to 1977. Five comparables have full or partial unfinished basements and one comparable has a full, partially finished basement. Four comparables have central air conditioning and all of the comparables

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<sup>1</sup> The appellant's evidence indicates the subject dwelling has a partial unfinished basement; the board of review's analysis shows the subject has a partial finished basement; and the subject's property record card depicts the dwelling as having a concrete slab foundation. Due to the lack of corroborating testimony elicited at the hearing, the Board finds the subject property has a concrete slab foundation based on its property record card.

<sup>2</sup> The Board notes the 13<sup>th</sup> Edition of the Appraisal of Real Estate and the Appraisal Institutes Uniform Standards of Professional Appraisal Practice (USPAP) defines an "appraisal" as "The act or process of developing an opinion of value."

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have fireplaces. Five comparables have garages that contain from 240 to 510 square feet. One comparable was described as having a two-car garage. The dwellings are situated on lots that range in size from 10,032 to 15,575 square feet of land area. The comparables sold from February 2009 to June 2010 for prices ranging from \$340,000 to \$425,000 or from \$147.95 to \$176.57 per square foot of living area including land. Pheneger adjusted the comparables for differences to the subject for land area, dwelling size, basement area, garage size and date of sale. After adjustments, Pheneger calculated adjusted sales prices ranging from \$387,987 to \$433,715 or from \$170.22 to \$200.49 per square foot of living area including land. Based on these adjusted sale prices, Pheneger estimated the subject property had an indicated market value of \$415,000 or \$172.63 per square foot of living area including land.

Under cross-examination, Pheneger testified the adjustment amounts were based on his "experience and other appraiser reports he has been reviewing." Land adjustment amounts were based on the values assigned by the township assessor. Other adjustment amounts for dwelling size, garages and the like were also questioned. A positive or negative time adjustment was made at .5% per month in relation to the January 1, 2010 valuation date, but the adjustment amount was capped at 10%. Pheneger testified he did not inspect the subject and may have "driven by" the comparable sales. Pheneger testified he did review Real Estate Transfer Declarations associated with the comparable sales to determine if they were arm's-length transactions. The declarations were not included in the report. Pheneger did not interview the buyers or sellers involved in the transactions.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$155,150 was disclosed. The subject's assessment reflects a market value of \$466,196 or \$193.33 per square foot of living area including land when applying the 2010 three year average median level of assessments for DuPage County of 33.28%. In support of the subject's assessment, the board of review submitted an analysis of four suggested comparable sales prepared by the Milton Township Assessor's Office.

The board of review called as its witness Mary Cunningham, Deputy Assessor for Milton Township. Cunningham has the Certified Illinois Assessing Officer (CIAO) designation. The process of obtaining a CIAO designation was outlined. Cunningham holds a college degree in accounting and business. Appellant's counsel raised no objection with respect to the testimony of Cunningham.

The assessor initially opined appellant's comparable 5 was not an arm's-length transaction because it was not advertised for sale. However, after reviewing the Multiple Listing Service sheet and its associated Real Estate Transfer Declaration, Cunningham agreed the sale was exposed to the open market.

Cunningham analyzed four suggested comparable sales in defense of the subject's assessed valuation. The comparable sales were described as being located in the Glencoe area. The analysis describes the comparables as two-story frame dwellings that were built from 1970 to 1978. The comparables have full or partial basements, three of which contain finished basement area. All the comparables have central air conditioning and four comparables have a fireplace. The comparables have attached garages that range in size from 418 to 506 square feet. The dwellings range in size from 1,944 to 2,282 square feet of living area and are situated on lots that

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range in size from 8,700 to 10,658 square feet of land area. The comparables sold from June 2008 to July 2010 for prices ranging from \$405,500 to \$480,000 or from \$196.18 to \$210.34 per square foot of living area including land.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination, Cunningham was questioned as to the similarity of comparables C and F in terms of dwelling size and age. Cunningham testified she did not inspect the subject or the comparables. She was of the opinion all the sales submitted by both parties were arm's-length transactions.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant submitted a report prepared by Chris C. Pheneger, of Barron Corporate Tax Solutions, containing an estimate of value of \$415,000. During the hearing Pheneger claimed the report was not an appraisal, although the report offered an opinion of value. The Board finds Pheneger's value conclusion and testimony not to be credible. Pheneger testified that Barron Corporate Tax Solutions' fee is contingent on the outcome of the appeal. Pheneger testified the company receives a percentage of the tax savings. If there are no tax savings, Barron's does not get paid. The Board finds the fact that Barron's fee is contingent on the outcome of the appeal calls into question the objectivity of the preparer of the report and final value conclusion. Page 2 of the consulting report states that "Barron Corporate Tax Solutions, Ltd. is not performing services that constitute appraisal practice, **requiring impartiality (Emphasis Added)**, but is providing consulting services which is not under the purview of the Uniform Standards of Appraisal Practice (USPAP) . . ." The Board finds that Barron has a direct pecuniary interest in the outcome of the appeal that may result in a biased report. The Board finds that Pheneger's employer having a direct interest in the outcome of the hearing undermines Pheneger's testimony as an impartial unbiased expert. The Board further finds the adjustment amounts applied by Pheneger to the comparables, though logical, are not supported by any credible market value evidence contained in the consulting report. Pheneger explained the adjustment amounts were based upon his experience and reviewing other appraiser reports. However, the Board finds Pheneger is not a licensed appraiser nor deemed to be an expert in the field of real estate evaluation for purposes of this appeal, which detracts from the weight given his adjustment process and from the weight of his value opinion. The Board recognized Pheneger holds a Certified Member of the Institute (CMI) designation from the Institute for Professionals in Taxation. However, the Board is not aware of any accreditations associated with this entity or that this entity has been recognized in Illinois for their expertise in the field of real property

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valuation. For these reasons the Board finds Pheneger's testimony, the report and the opinion of value offered are not credible. However, the Board will examine the raw market data contained within the consulting report, applying its natural probative weight.

With respect to the comparable sales submitted by both parties, the Board gave less weight to comparables D, E and F submitted on behalf of the board of review. Comparables D and E sold in 2008, which are not considered credible indicators of market value as of the subject's January 1, 2010 assessment date. Comparable F is smaller in dwelling size than the subject. The Board finds the remaining seven comparable sales are more representative of the subject in terms of location, design, age, size and most features, but contain considerably less land area than the subject. The comparables sold from February 2009 to June 2010 for sale prices ranging from \$340,000 to \$433,000 of from \$147.95 to \$193.46 per square foot of living area including land. The subject's assessment reflects a market value of \$466,196 or \$193.33 per square foot of building area including land, which falls within the range established by the most similar comparable sales contained in this record. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds the subject's estimated market value as reflected by its assessment is supported and no reduction is warranted.

In conclusion, based on this record, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction is not justified.

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<b>APPELLANT:</b>	<u>Elmdale Avenue Condo Association</u>
<b>DOCKET NUMBER:</b>	<u>09-27276.001-R-1 thru 09-27276.006-R-1</u>
<b>DATE DECIDED:</b>	<u>December, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is composed of a six unit residential condominium building. The condominium building is 86 years old. The property is a class 2-99 residential condominium under the Cook County Real Property Assessment Classification Ordinance (hereinafter "Ordinance") and is located in Chicago, Lake View Township, Cook County. Class 2-99 property has an Ordinance level of assessment of 10% for the 2009 tax year.

The appellant is challenging the subject's assessment for the 2009 tax year based on assessment inequity. The appellant submitted information on four comparable properties described as class 2-99 properties each with six units. The comparables ranged in age from 86 to 98 years old and were located within two blocks from the subject property. The comparables have improvement assessments ranging from \$104,673 to \$149,616 or from \$17,446 to \$24,936 per unit. The appellant indicated the subject condominium units had a combined improvement assessment of \$159,596 or \$26,599 per unit. Based on this evidence the appellant requested a reduction in the improvement assessments of each unit to \$29,271, \$16,988, \$16,596, \$30,316, \$18,033 and \$19,470, respectively.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's combined total assessment of \$181,913 was disclosed. The subject's assessment reflects a market value of \$1,819,130 when applying the Ordinance level of assessment for class 2-99 property.

In support of the assessment the board of review submitted an analysis prepared by Matt Panush, an analyst with the Cook County Board of Review. He indicated the total consideration for a sale of a residential unit in the subject's condominium in 2009 was \$368,500. The analyst deducted \$7,370 or 2% of the total sales price from the total consideration to account for personal property to arrive at a total adjusted consideration of \$361,130. Dividing the total adjusted consideration by the percentage of interest of ownership in the condominium for the unit that sold of 14.71% indicated a full value for the condominium property of \$2,454,996. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessments by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989); 86 Ill.Admin.Code 1910.63(e). The evidence must demonstrate a consistent pattern of assessment inequities within

## **2013 SYNOPSIS – RESIDENTIAL CHAPTER**

the assessment jurisdiction. After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The Board gives little weight to the appellant's equity comparables. First, the Board finds the appellant provided limited descriptions with respect to the subject condominium building and units and limited descriptions with respect to the purported comparables. The Board finds the comparables presented by the appellant were not shown to be similar to the subject property in physical attributes. Furthermore, the appellant presented no market data to demonstrate the comparables and the subject property were similar in value but assessed at substantially different proportions of fair cash value. The Board finds the appellant failed to demonstrate the comparables and the subject were similar condominiums with similar by-laws, rules, regulations, fee structures, unit sizes, style, condition, amenities, occupancy rates, and parking facilities. The Board further finds the board of review presented a market analysis that supported the assessments of the respective condominium units. In conclusion, the Board finds the appellant did not demonstrate with clear and convincing evidence that the improvement assessments were inequitable and reductions in the assessments are not justified.

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<b>APPELLANT:</b>	<b>John Friedman</b>
<b>DOCKET NUMBER:</b>	<b>07-22180.001-R-1</b>
<b>DATE DECIDED:</b>	<b>January, 2013</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a 3,750 square foot parcel of land improved with a 94-year old, two-story, masonry, single-family dwelling containing 2,985 square feet of living area, three and one half baths, six bedrooms, one fireplace, central air conditioning, and a full, unfinished basement. The appellant argued that the assessed value is not accurate under the Historic Residence Assessment Freeze Law (35 ILCS 200/10-40 et seq.)

In support of this argument, the appellant, via counsel, submitted the board of review's Notice of Final Decision on Assessed Value for 2007, an assessor database printout indicating that the subject is a landmark property with a final assessed value of \$76,799, and a written brief. The brief indicates that: 2007 is the 11<sup>th</sup> year of the freeze for the subject property; the "fair market value" of the property is to increase every year by 25% until it reaches full value in year 12 of the freeze; the base year total assessed value is \$24,085; in 2005, which represents the 9<sup>th</sup> year of the freeze, the total assessment increased to \$38,535, representing a net increase of \$14,450; the 2006 total assessment should therefore increase by an additional \$14,450 to \$52,985; and the 2007 total assessed value should therefore increase by \$14,450, yielding a 2007 total assessed value of \$67,435. Based on this reasoning, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$76,799 was disclosed. As evidence, the board provided the ASIQ assessment history printout that indicates there is a historic residence landmark exemption on the property that was first applied in 1997. The subject's improvement assessed value was adjusted by the board of review from \$92,116 to \$80,595 or \$27.00 per square foot of living area. The board of review added the land assessment of \$13,776 to the revised improvement assessed value to arrive at a total assessed value of \$94,371 prior to applying the exemption. The board then subtracted the base year total assessed value of \$24,085 from the current total assessed value of \$94,371 to arrive at an "adjusted value" of \$70,285. The board then calculated 75% of the adjusted value, or \$52,714, and added this value to the base year of \$24,085, to arrive at a landmark valuation of \$76,799. This indicates that the subject's improvement assessed value with the exemption applied is \$63,023 or \$21.11 per square foot of living area.

In addition, the board of review presented descriptions and assessment information on a total of four properties suggested as comparable and located within the subject's neighborhood, all located within a one-quarter mile radius of the subject. The properties are described as two-story, masonry, single-family dwellings. They include two full to three and one half-baths, three or five bedrooms, a full, finished or unfinished basement, one or two fireplaces for two properties, central air conditioning for three properties, and garage area for three properties. The properties range: in age from 85 to 113 years; in size from 2,618 to 3,085 square feet of living

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area; and in improvement assessment from \$32.83 to \$37.00 per square foot of living area. Based on this evidence, the board of review requested confirmation of the subject's assessment.

At hearing, both parties re-affirmed the written evidence previously submitted.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is not warranted.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the evidence indicates a reduction is not warranted.

As reflected by the evidence and testimony, the Board recognizes and affirms that the subject property is in its 11<sup>th</sup> year of receiving the Historic Residence Assessment Freeze. This Act states:

[P]roperty certified pursuant to this Historic Residence Assessment Freeze Law shall be eligible for an assessment freeze, as provided in this Section, eliminating from consideration, for assessment purposes, the value added by the rehabilitation and limiting the total valuation to the base year valuation. 35 ILCS 200/10-45.

After the eight-year valuation period, the subject property is afforded a gradual increase in valuation for the next four years. At the expiration of this four-year period, the subject property is assessed at its current fair cash value. In this case, the subject property is in its 11<sup>th</sup> year of the freeze period. In determining the increase in the assessed value for this year, the Act states:

For the four years after the expiration of the eight-year valuation period, the valuation for purposes of computing the assessed valuation shall be as follows:  
For the third year, the base year valuation plus 75% of the adjustment in value.  
35 ILCS 200/10-50.

For the 2007 assessment, which is the 11<sup>th</sup> year of the historic residence assessment freeze, the evidence reflects that the current market value of the subject property is \$589,819. Under the act, the valuation should be the base year valuation plus 75% of the adjustment in value. The base year valuation of \$150,531 is subtracted from the current valuation of \$589,819 to yield an adjustment in value of \$439,287. Applying a 75% factor to this adjustment in value equals \$329,466. Adding the base year valuation of \$150,531 yields an adjusted market value of \$479,997, or a total adjusted assessed value of \$76,799.

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As the appellant failed to submit any additional equity or market value data to indicate that the current fair cash value is excessive, the Board finds that the subject's assessed value is appropriate and a reduction is not warranted.

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<b>APPELLANT:</b>	<b>JLT Property Management</b>
<b>DOCKET NUMBER:</b>	<b>11-01509.001-R-1</b>
<b>DATE DECIDED:</b>	<b>November, 2013</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is improved with a one-story dwelling of frame construction containing approximately 882 square feet of living area.<sup>1</sup> The dwelling was constructed in 1948. Features of the home include a concrete slab foundation, central air conditioning and a two-car garage of 360 square feet of building area. The property has a 17,460 square foot site and is located in Westmont, Downers Grove Township, DuPage County.

The appellant's appeal is based on overvaluation. In support of this argument the appellant submitted an appraisal estimating the subject property had a market value of \$160,000 as of October 24, 2011. The appraisal was prepared by Mark R. Stapleton, a State of Illinois Certified Residential Real Estate Appraiser, for a refinance transaction and the rights appraised were fee simple. In estimating the market value of the subject property, the appraiser developed the income and the sales comparison approaches to value.

As to the subject dwelling, the appraiser noted there were no updates to the property in the prior 15 years. Additionally, there were no apparent signs of deferred maintenance, "however, the interior of the home needs miscellaneous painting and updating in the kitchen and bathroom." In the Supplemental Addendum, the appraiser also noted the subject is situated on a larger than conforming site, this is a fairly small home and considered a borderline underimprovement for the area, but the structure still has function use and is in average condition. This would not affect the marketability of the property, but the subject lacks a basement which is atypical for the area.

In the income approach to value, the appraiser utilized rental comparables as outlined in the Single Family Comparable Rent Schedule. In that document, the appraiser presented three rental comparables located from .64 to 1.35-miles from the subject property. The rental comparables had rents ranging from \$1,000 to \$1,150 per month. The comparables contain either 775 or 1,000 square feet of living area and each has a full unfinished basement. Two comparables have outside parking and one comparable has a two-car garage. After adjustments for differences, the appraiser reported adjusted monthly market rents ranging from \$1,075 to \$1,135.

Considering this data, the appraiser estimated the subject would have an estimated rent of \$1,100 per month with a gross rent multiplier of 150 resulting in an indicated value by the income approach of \$165,000. The appraiser further noted that the "income approach is not considered to be applicable since most homes in the subject area are owner occupied with limited rental data available to the appraiser. However, it was included due to the request of the client."

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<sup>1</sup> The assessing officials report a dwelling size of 852 square feet of living area as depicted in a property record card with a schematic. The appraiser's schematic drawing of the subject depicting 882 square feet is slightly more detailed and has been given greater weight in this decision.

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Using the sales comparison approach, the appraiser provided information on four comparable sales and two listings located from .01 to .37 of a mile from the subject. The comparables are described as one-story dwellings that range in size from 900 to 1,236 square feet of living area. The dwellings range in age from 53 to 63 years old. Four of the comparables include a basement and each of the homes has central air conditioning and a one-car or a two-car garage. One of the comparables has a fireplace. The comparables have sites ranging in size from 9,000 to 22,192 square feet of land area. Four of the comparables sold from January to August 2011 for prices ranging from \$150,000 to \$205,000 or from \$166.67 to \$185.02 per square foot of living area, including land. The listings had asking prices of \$199,000 and \$199,900 or \$161.73 and \$180.91 per square foot of living area, including land. After making adjustments to the comparables for differences from the subject that were detailed in the Supplemental Addendum, the appraiser estimated the comparables had adjusted prices ranging from \$137,500 to \$171,700 or from \$129.61 to \$163.60 per square foot of living area, including land. Based on this data the appraiser estimated the subject had an estimated value under the sales comparison approach of \$160,000 or \$181.41 per square foot of living area, including land.

In reconciling the two approaches to value the appraiser gave sole weight to the sales comparison approach to value and estimated the subject property had a market value of \$160,000 as of October 24, 2011.

Based on this evidence, the appellant requested a reduction in the subject's assessment to reflect the appraised value at the statutory level of assessment of 33.33%.

The board of review submitted its "Board of Review Notes on Appeals" wherein the subject's total assessment of \$61,650 was disclosed. The subject's assessment reflects a market value of \$185,970 or \$210.85 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for DuPage County of 33.15% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

In support of the subject's assessment the board of review submitted a three-page memorandum outlining a response to the appellant's data and evidence in support of the assessment. As to the named appellant, the board of review's submission stated "our records indicate the owners as Linda Tischler and Maribeth Tischler (deed document attached)." Attached were three documents: a Trustee's Deed where Maribeth Tischler (trust) conveyed one-half interest each to herself (in trust) and to Linda Tischler (trust) executed July 15, 2010; a Quit Claim Deed where Maribeth and Linda Tischler (trusts) conveyed the property to Daniel Tischler executed on November 29, 2011; and a Deed in Trust with Daniel Tischler conveying the property to Maribeth and Linda Tischler (trusts) executed on December 27, 2011. Furthermore, no motion challenging jurisdiction on this basis was timely made by the board of review.

Next, the memorandum addressed "criticisms" that the appraised value was as of October 24, 2011, but "we assess as of 1/1/2011"; there were no location adjustments; lack of consistency in site adjustments; along with other comments including the lack of reference to the July 2010 permit for a new roof on the subject property.

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Then the memorandum outlined "assessed values differences" and set forth "appraisal adjustments" for the comparables with [market] value conclusions after adjusting assessments ranging from \$188 to \$262 per square foot of living area, including land.

In support of the subject's estimated market value as reflected by its assessment, the board of review presented a spreadsheet of three comparable sales located within a half mile of the subject property.<sup>2</sup> The comparables are improved with one-story dwellings of frame or brick exterior construction that range in size from 1,000 to 1,200 square feet of living area. The dwellings were constructed from 1958 to 1967. Features of the comparables include a full basement, one of which is 50% finished. Each home has a garage of either 528 or 624 square feet of building area. The comparables have sites ranging in size from 10,227 to 10,653 square feet of land area. Each comparable has the same neighborhood code as the subject property. The comparables sold from May 2009 to January 2010 for prices ranging from \$235,000 to \$310,000 or from \$217.79 to \$310.00 per square foot of living area, including land.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The Property Tax Code allows "any taxpayer dissatisfied with the decision of the board of review" to file an appeal with the Property Tax Appeal Board within specified time limits. (35 ILCS 200/16-160). In addition, the procedural rules of the Property Tax Appeal Board mandate that if the board of review objects to the jurisdiction of the Property Tax Appeal Board in a given appeal that "it must submit a written request for dismissal of the petition prior to the submission of the Board of Review Notes on Appeal and accompanying documentation." (86 Ill.Admin.Code §1910.40(b)). As discussed above, the memorandum questioning the standing of the appellant JLT Property Management was attached to the "Board of Review – Notes on Appeals" and no request to dismiss was filed prior thereto. The Board will not consider the issue set forth in the memorandum regarding the named appellant and furthermore, the attached documentation regarding ownership does not establish that JLT Property Management was not the "taxpayer" of the subject property.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds the best evidence of market value to be the appraisal of the subject property submitted by the appellant. The appellant's appraiser developed the income and sales

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<sup>2</sup> The memorandum also outlines "adjustments" to the assessments of these comparables to arrive at [market] values ranging from \$182 to \$198 per square foot of living area, including land.

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comparison approaches to value and gave sole weight to the sales comparison approach. The sales and listings utilized by the appraiser were similar to the subject in location, size, style, exterior construction, features, age and/or land area with adjustments for differences which were explained and appear well-supported. These properties also sold or were listed most proximate in time to the assessment date at issue of January 1, 2011.

Furthermore, the appraised value of \$160,000 is below the market value reflected by the assessment of \$185,970. No weight was given to the data in the memorandum from the board of review adjusting the assessments of the board of review's comparables to arrive at a market value estimate based upon the adjusted assessments. The three comparables presented by the board of review sold between May 2009 and January 2010. Less weight was given the board of review comparable sales #2 and #3 due to the dates of sale not being proximate in time to the assessment date at issue of January 1, 2011. Additionally, less weight was given to board of review comparable #1 due to differences in age, size, full basement and garage size, each of which is superior when compared to the subject dwelling built in 1948 and containing 882 square feet of living area on a concrete slab foundation with a 360 square foot garage.

Based on this record the Board finds the subject property is overvalued based on its assessment and a reduction commensurate with the appellant's request is warranted.

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<b>APPELLANT:</b>	<u>William Lovett</u>
<b>DOCKET NUMBER:</b>	<u>10-03997.001-R-1</u>
<b>DATE DECIDED:</b>	<u>April, 2013</u>
<b>COUNTY:</b>	<u>Sangamon</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of an owner occupied residential property located in Rochester Township, Sangamon County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this claim, the appellant submitted an appeal petition, a sales contract and a settlement statement. The documentation revealed the appellant purchased the subject property for \$232,000 in July 2008. The evidence indicates the subject property was advertised for sale in the open market with a Realtor and the Multiple Listing Service for over one year and the parties involved in the transaction were unrelated.

The evidence also revealed the subject property was the matter of an appeal before the Property Tax Appeal Board the prior year under Docket Number 09-05204.001-R-1. In that appeal, the Board issued a decision lowering the subject's assessment to \$83,623 based on the weight and equity of the evidence.

Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$90,942 was disclosed. The subject's assessment reflects an estimated market value of \$272,853 when applying Sangamon County's 2010 three-year median level of assessment of 33.33%.

In response to the appeal, the board of review argued the evidence provided (by the appellant) is too old to determine current fair market value. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The appellant argued the subject property was overvalued. When market value is the basis of the appeal, the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The record also disclosed the appellant filed an appeal before the Property Tax Appeal Board the prior assessment year under Docket Number 09-05204.001-R-1. In that appeal, the Board issued a decision lowering the subject's assessment to \$83,623 based on the weight and equity of the evidence contained in the record.

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Section 16-185 of the Property Tax Code provides in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review. (35 ILCS 200/16-185).

The record indicates that the subject property is an owner occupied residence. The record contains no evidence indicating the subject property sold in an arm's-length transaction subsequent to the Board's prior year's decision. In addition, the Board hereby takes notice that the 2010 assessment year in question is within the same general assessment period as the prior assessment year.<sup>1</sup> For these reasons the Property Tax Appeal Board finds that a reduction in the subject's assessment is warranted to reflect the Board's prior year's decision plus application of the 2010 Rochester Township equalization factor of 1.0307%.

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<sup>1</sup> Sangamon County's general assessment period commenced on January 1, 2007, and continued through 2010. The new general assessment period commenced on January 1, 2011 and continues through 2014.

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APPELLANT:	<u>Kevin &amp; Tammy McCabe</u>
DOCKET NUMBER:	<u>08-07083.001-R-1</u>
DATE DECIDED:	<u>March, 2013</u>
COUNTY:	<u>Tazewell</u>
RESULT:	<u>No Change</u>

The subject parcel of approximately 11,250 square feet of land area is improved with a 1.5-story single-family dwelling of frame exterior construction that was built in 2005. The dwelling contains 2,160 square feet of living area and features a full basement that is partially finished, central air conditioning, a fireplace and an attached three-car garage. The property is located in Pekin, Groveland Township, Tazewell County. An occupancy permit was issued for the dwelling on November 3, 2005.<sup>1</sup>

The appellants through counsel filed an appeal with the Property Tax Appeal Board based on a contention of law that the subject property was improperly assessed as omitted property. As a consequence of the erroneous assessment, the appellants assert that they are not liable for any taxes due related to the improvement assessment until assessment year 2011.<sup>2</sup> In the brief to support this contention, counsel for the appellants cites to Section 9-180 of the Property Tax Code ("Code") providing in pertinent part:

Pro-rata valuations; improvements or removal of improvements. The owner of property on January 1 also shall be liable, on a proportionate basis, for the increased taxes occasioned by the construction of new or added buildings, structures or other improvements on the property from the date when the occupancy permit was issued or from the date the new or added improvement was inhabitable and fit for occupancy or for intended customary use to December 31 of that year. The owner of the improved property shall notify the assessor, within 30 days of the issuance of an occupancy permit or within 30 days of completion of the improvements, on a form prescribed by that official, and request that the property be reassessed. The notice shall be sent by certified mail, return receipt requested and shall include the legal description of the property. . . .

[Emphasis added; bold emphasis in brief.] (35 ILCS 200/9-180). Factually the appellants assert that a certificate of occupancy was received from the city of Pekin on November 3, 2005. The appellants also assert that according to Juanita Van Buskirk, an employee of the city of Pekin who administratively handles the city's occupancy permits, when a certificate of occupancy is issued the owner is given a copy and a copy is placed "in a basket at city hall to be picked up by the township assessor" who periodically picks up the certificates. Most townships reportedly pick up their certificates each month. This system has been in place prior to Buskirk's employment in 2004 and has not changed.

<sup>1</sup> The document is entitled "Certificate of Occupancy With Exceptions (Rear Deck & Balcony Railing)" issued by the City of Pekin Department of Building and Inspection as to Building Permit No. 200400472.

<sup>2</sup> The Property Tax Appeal Board takes notice that the appellants have pursued like appeals for assessment years 2008, 2009 and 2010.

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The appellants contend that Ernie Hiller, the Groveland Township Assessor, admits that he has no form which he has prescribed for owners to request that property be reassessed. Hiller also confirmed that he obtains his information for reassessment from the certificates of occupancy that he periodically obtains from the city.

The appellants further report in the brief that "someone from the Groveland Township assessor's office appeared at the property in November of 2005" in order to take measurements of the improvements to the subject parcel. By a one-page "Notice of Hearing For Omitted Property" dated June 30, 2011, the Tazewell County Board of Review notified the appellants of a hearing to consider a 2008 assessment on the subject property totaling \$74,410 with the indication for the reason for the change from a land only assessment was "omitted property" with a "completion [date] 11/03/2005." Thereafter on January 31, 2012, the Tazewell County Board of Review issued a "Notice of Final Decision" on the subject property setting forth a final board of review 2008 assessed valuation of \$74,410. The instant appeal arose from this final decision.

Counsel for the appellants concludes in the brief, "That, given that the Groveland Township assessor does not have a form prescribed by him for notification purposes as required by the statute but his office did in fact assess [*sic*]<sup>3</sup> the property shortly after the November 3, 2005 completion date, the property was not omitted and there is a failure of due process on the part of the assessor, and, as such, the homeowners should not be penalized by a reassessment except for the 2011/2012 tax year."

For these reasons, the appellants request a reduction in the assessment to the land only value that had previously been placed on the subject parcel.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject totaling \$74,410 was disclosed. In response to the appeal, the board of review submitted a two-page letter. As to the appellants' submission, the board of review reported it has "no disagreement with any of the facts contained in Mr. Hall's brief, but we believe that the statute permits the County to rectify the situation and make all assessments equitable to the taxpayers of Tazewell County."

As to the assessment of the subject improvement as omitted property, the board of review states "[t]he property was discovered as being omitted from the tax roles [*sic*] in 2011." As a consequence, the property was added at full value for 2011 "and as omitted property for the three prior years as allowed by statute."

The board of review further asserts that in accordance with Section 9-180 of the Code (35 ILCS 200/9-180) "the appellant shall give the assessor a formal notice of completion." The board of review also states that although the appellants received an occupancy permit, they were not relieved of their obligation to inform the assessor of the completion of the improvements.

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<sup>3</sup> It is erroneous based upon the facts herein to assert that the subject property was "assessed" after the occupancy permit was issued. The improvement was apparently measured by the township assessor's office and, as stated in paragraph #6 of the appellants' brief, "apparently no further action was taken in regard to the assessment."

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Finally, the board of review contends that the appellants were aware their tax bill did not reflect an improvement assessment and "made no effort to correct the situation for several years."

Based on the foregoing, the board of review contended that the subject property consisted of a taxable improvement which was properly assessed by the board of review as omitted property.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The issue before the Property Tax Appeal Board is whether the board of review had the authority to assess the subject improvements as omitted property for the assessment year at issue. The Property Tax Appeal Board finds that the board of review did have the authority to assess the subject improvements as omitted property for the assessment year at issue<sup>4</sup> and therefore, no reduction is warranted.

The appellants' argument is essentially that the board of review should be deemed prohibited from assessing the improvement on the subject property as "omitted property" under the Code due to various purported failures of the assessing officials. The appellants assert that they should not be liable for the improvement assessment of the subject property because the assessing officials failed in their duty to process a copy of the occupancy permit that was made available to the township assessor by the city of Pekin where occupancy permits are processed. Moreover, the appellants contend that the township assessor has no form available for a property owner to use in order to report completion of construction citing to Section 9-180 of the Code (35 ILCS 200/9-180). Lastly, the appellants contend that an individual from the Groveland Township assessor's office was at the subject property "shortly after the November 3, 2005 completion date," but no further action was apparently taken to assess the improvement on the subject parcel until notification of the omitted property assessment.

The Property Tax Appeal Board finds these arguments by the appellants lack any merit. Based on the record, the parties agree that the board of review never assessed any of the improvements prior to the omitted property assessment. Pursuant to Section 9-270 of the Code, there is but one exception to the authority of a board of review to assess omitted property. Specifically, this provision allows taxpayers to be free from omitted tax assessments if all of the three conditions have been met: (1) the property was last assessed as unimproved; (2) the owner gave notice of

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<sup>4</sup> Section 9-265 of the Code (35 ILCS 200/9-265) states in part that:

If any property is omitted in the assessment of any year or years, so that the taxes, for which the property was liable, have not been paid, or if by reason of defective description or assessment, taxes on any property for any year or years have not been paid, . . . , the property, when discovered, shall be listed and assessed by the board of review . . . . For purposes of this Section, "defective description or assessment" includes a description or assessment which omits all the improvements thereon as a result of which part of the taxes on the total value of the property as improved remain unpaid. . . .

When property or acreage omitted by either incorrect survey or other ministerial assessor error is discovered and the owner has paid its tax bills as received for the year or years of omission of the parcel, then the interest authorized by this Section shall not be chargeable to the owner. However, nothing in this Section shall prevent the collection of the principal amount of back taxes due and owing.

. . . .

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subsequent improvement and requested a reassessment under Section 9-180; and (3) no reassessment was made within 16 months. (35 ILCS 200/9-270).

The appellants appear to contend that sufficient notice was given under the second requirement of Section 9-270 when the city of Pekin granted the occupancy permit and left a copy of the occupancy permit for the township assessor to pick up. The Property Tax Appeal Board finds this contention is not meritorious. The notice requirement referred to in Section 9-270 of the Code is further described in Section 9-180 of the Code. The pertinent provision of Section 9-180 reads as follows:

The owner of the improved property shall notify the assessor, within 30 days of the issuance of an occupancy permit or within 30 days of completion of the improvements, on a form prescribed by that official, and request that the property be reassessed. The notice shall be sent by certified mail, return receipt requested and shall include the legal description of the property.

(35 ILCS 200/9-180). The appellants made no assertion that they individually complied with any of these requirements of Section 9-180, despite the lack of a "prescribed form" for doing so being made available by the township assessor. Based upon provisions of the Code, the board of review has the authority to assess property that was erroneously omitted from the tax rolls unless the three conditions listed in Section 9-270 of the Code are satisfied. The record herein is clear that the appellants failed to meet the second requirement which requires the owner of the property to give notice of subsequent improvements and to request a reassessment as required by Section 9-180 of the Code. Therefore, the Property Tax Appeal Board finds the appellants failed to provide adequate notice and the board of review was not prevented from assessing the subject improvement as omitted property for the assessment year at issue.

In conclusion, the Property Tax Appeal Board finds removal of the subject's improvement assessment is not justified based on provisions of the Code and this record. Thus, the Board finds no change in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<u>Agnes Mroczkowski</u>
<b>DOCKET NUMBER:</b>	<u>09-04966.001-R-2 thru 09-04966.003-R-2</u>
<b>DATE DECIDED:</b>	<u>October, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is improved with a three story masonry constructed condominium. The subject property has six units with each containing approximately 924 square feet of living area resulting in a total living area of 5,544 square feet.<sup>1</sup> The building is approximately 30 years old. The subject property has a 3,269 square foot site and is located in Bensenville, Addison Township, DuPage County.

The appellant submitted evidence to the Property Tax Appeal Board through counsel challenging the assessment on parcels number (PIN) 03-26-209-001, 03-26-209-003 and 03-26-209-005.<sup>2</sup> The brief depicts that the subject property was 100% vacant in 2009. Whitley argued in her brief that due to the fact these three units were vacant during 2009; a 10% occupancy factor should be applied to the improvements. In her brief she calculated these three units as having a combined improvement assessment of \$126,090. Applying a 10% occupancy factor resulted in a combined improvement assessment of \$12,609 or \$4,203 per unit. The appellant also submitted an affidavit asserting that the units under appeal were vacant for all of tax year 2009. The appellant also provided copies of listing sheets noting the three units were listed on the market on January 22, 2010 for prices of \$64,900, \$59,900 and \$69,900, respectively. Based on this evidence the appellant requested the total assessment for each of the three PINs be reduced to \$7,003.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment for each PIN that is being contested totaling \$44,830 was disclosed. The total assessment for each of the PINs reflects a market value of \$134,787 using the 2009 three-year average median level of assessments for DuPage County of 33.26%.

The board of review, through Frank Marack, Jr., Chief Deputy Assessor of Addison Township submitted sales information on three comparable sales identified by the assessor's office. The comparable sales were condominium units located in the subject building that sold from January 2008 to September 2008 for prices ranging from \$149,900 to \$155,000.

The evidence revealed the Addison Township Assessor's Office does not provide an assessment reduction based on vacancy. However, prorated assessments are calculated based on occupancy. Based on this evidence, the board of review requested confirmation of the assessments.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further

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<sup>1</sup> Appellant appealed three of the six units.

<sup>2</sup> Per request of appellant's counsel, the oral hearing herein was waived and a request to decide this appeal based on the written record was granted.

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finds the evidence in the record does not support a reduction in the assessments of the PINs under appeal.

The appellant argued the assessments on the subject PINs should be reduced to account for vacancy during 2009. The Board gives this argument no weight. The un-refuted evidence provided by Marack was that the assessor's office does not provide an assessment reduction based on vacancy.

Furthermore, the record contained information on three sales of condominium units within the subject building that sold from January 2008 to September 2008 for prices ranging from \$149,900 to \$155,000. The total assessment for each of the PINs of \$44,830 reflects a market value of \$134,787, which is below the sales prices of these similar units. The Board finds this evidence indicates the assessment of the three units under appeal are reflective of market value as of January 1, 2009, and no reduction in the assessments are warranted.

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<b>APPELLANT:</b>	<u>Dean Peters</u>
<b>DOCKET NUMBER:</b>	<u>08-27154.001-R-1</u>
<b>DATE DECIDED:</b>	<u>December, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is an 8,145 square foot site that is improved with two buildings. Building #1 is a one-story single family dwelling of frame construction that contains 441 square feet of living area on a slab foundation. The building is approximately 78 years old. Building #2 is a one-story single family residence of frame construction with 1,200 square feet of living area. The dwelling is approximately 79 years old with a partial unfinished basement. The property also has a detached one-car garage. The property is located in Lansing, Thornton Township, Cook County. The property is classified as a 2-03 property under the Cook County Real Property Assessment Classification Ordinance (hereinafter "Ordinance"). Class 2-03 property has an Ordinance level of assessment for the 2008 tax year of 16%.

The appellant is challenging the subject's assessment for the 2008 tax year based on overvaluation. In support of this argument the appellant submitted evidence disclosing the subject property was purchased on January 10, 2005 for a price of \$67,500. The appellant completed Section IV - Recent Sale Data of the appeal and did not disclose whether or not the parties to the transaction were related and further indicated the property had not been advertised on the open market. The appellant also submitted a copy of the warranty deed disclosing the grantors were Richard E. Jansma and Marjori A. Jansma and the grantees were David Jansma and Dean Peters. The appellant provided a copy of a page from the Cook County Recorder of Deeds website disclosing a warranty deed was executed on January 10, 2005, recorded February 2, 2005 and further indicated the property sold for a price of \$67,500. The website page also disclosed the grantors were Richard E. Jansma and Marjori A. Jansma and the grantees were David Jansma and Dean Peters. Also submitted was a copy of a "Lease - Option to Buy" dated January 24, 1995, between Richard and Marjorie Jansma and David Jansma and Dean Peters. Based on this evidence, the appellant requested the subject's assessment be reduced to \$6,750.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$12,827 was disclosed. The subject's assessment reflects a market value of \$133,615 or \$81.42 per square foot of living area, including land, when applying the 2008 three year average median level of assessments for class 2 property under the Cook County Real Property Assessment Classification Ordinance of 9.60% as determined by the Illinois Department of Revenue.

In support of the assessment the board of review submitted information on equity comparables. With respect to building #1, the smaller dwelling, the board of review completed a grid analysis using three comparables improved with one-story dwellings of frame construction that range in size from 480 to 646 square feet of living area. The dwellings ranged in age from 59 to 68 years old. One comparable had a full unfinished basement and two comparables had 1.5-car garages. These properties had improvement assessments ranging from \$6,661 to \$9,303 or from \$13.87 to \$14.40 per square foot of living area. Building #1 had an improvement assessment of \$3,870 or

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\$8.77 per square foot of living area. With respect to building #2, the larger home, the board of review submitted information on four comparables improved with larger one-story dwellings of frame or masonry construction that ranged in size from 1,239 to 1,376 square feet of living area. The dwellings ranged in age from 48 to 53 years old. Each comparable had a partial or full basement with one having a recreation room. Each comparable also had a one or two-car garage. These properties had improvement assessments ranging from \$10,151 to \$10,875 or from \$7.54 to \$8.38 per square foot of living area. Building #2 had an improvement assessment of \$4,722 or \$3.94 per square foot of living area. The board of review also submitted a list of 20 sales located in the subject's area and improved with class 2-03 dwellings. Three of these properties sold in July and August 2007 for prices of \$86,000, \$147,000 and \$184,000, respectively. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The Board gives no weight to the sale of the subject property as presented by the appellant in establishing overvaluation for the tax year in question. First, the sale is dated, occurring approximately 3 years prior to the assessment date at issue. Second, the Board finds the sale does not have the elements of an arm's length transaction. Initially the record disclosed the property was not advertised for sale or exposed on the open market. Furthermore, the record indicates the parties to the transaction were related in that the sellers were Richard E. and Marjori A. Jansma and one of the purchasers was David Jansma. For these reasons the Board finds the sale is not indicative of the subject's fair cash value as of January 1, 2008. The Board also finds the board of review presented a list of sales, with three occurring in 2007, that supported the conclusion the subject's assessment is reflective of the property's fair cash value. Additionally, the board of review presented equity comparables which further supported the subject's assessment. Based on this record the Board finds the appellant did not demonstrate by a

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preponderance of the evidence that the subject was overvalued and a reduction in the assessment is not justified.

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<b>APPELLANT:</b>	<b>John Roberson</b>
<b>DOCKET NUMBER:</b>	<b>08-26355.001-R-1</b>
<b>DATE DECIDED:</b>	<b>November, 2013</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a 7,983 square foot parcel of land improved with a 105-year old, two-story, frame, multi-family dwelling containing 3,026 square feet of living area, three baths, three fireplaces, and a full, finished basement. The appellant argues that the market value of the subject property is not accurately reflected in the property's assessed valuation and that the subject is inequitably assessed as the bases of this appeal.

In support of the market value argument, the appellant's petition indicates the subject was purchased on April 26, 2004 for \$110,000. The appellant failed to fill out the remainder of the petition in regards to the sale. The appellant included a copy of the settlement statement confirming the sale date and price.

In support of the equity argument, the appellant submitted information on a total of three properties suggested as comparable. The properties are described as two or three-story, masonry, multi-family dwellings. The properties have varying amenities. They range: in age from 78 to 82 years; in size 5,325 to 6,096 square feet of living area; and in improvement assessments from \$4.62 to \$4.86 per square foot of living area. Based on this evidence, the appellant requested a reduction in the subject's improvement assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's improvement assessment of \$20,940 or \$6.92 per square foot of living area and total assessment of \$25,729 were disclosed. The subject's total assessment reflects a fair market value of \$268,010 using the Illinois Department of Revenue's 2008 three year median level of assessment for class 2 property of 9.60%.

In support of the subject's assessment, the board of review submitted descriptions and assessment information on four properties. These properties are described as two-story, frame, multi-family dwellings with various amenities. The properties range: in age from 93 to 120 years; in size from 2,721 to 2,970 square feet of living area; and in improvement assessments from \$6.80 to \$7.30 per square foot of living area. As a result of this analysis, the board requested confirmation of the subject's assessment.

At hearing, the appellant's attorney argued that both the sales evidence and the board of review's equity comparable #4 support a reduction in the subject's assessment.

The board of review's representative, Nick Jordan, argued that the sale of the subject was 44 months prior to the lien date which is too far removed to be reflective of the market value. In addition, he argued the sale was a compulsory sale after a foreclosure. In support of this, he submitted *board of review hearing exhibit #2*, a copy from the recorder of deeds' website showing the sale history of the subject and a copy of the Lis Pendens and Notice of Foreclosure

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filed in court. As to the equity arguments, he asserted the appellant's comparables are not similar in size.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c).

In addressing the appellant's market value argument, the Board finds that the sale of the subject in April 2004 is too far removed from the lien date to accurately reflect the subject's market value as of January 1, 2008. Therefore, the Board gives the subject's sale no weight and finds a reduction based on market value is not warranted.

The appellant also contends unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the assessment data, the Board finds the appellant has not met this burden.

The parties presented a total of seven properties suggested as comparable. The Board finds the board of review's comparables most similar to the subject in size, design, construction, location, and/or age. These properties range: in age from 93 to 120 years; in size from 2,721 to 2,970 square feet of living area; and in improvement assessments from \$6.80 to \$7.30 per square foot of living area. In comparison, the subject's improvement assessment of \$6.92 per square foot of living area is within the range of these comparables. Therefore, after considering adjustments and the differences in both parties' comparables when compared to the subject, the Board finds the subject's per square foot improvement assessment is supported and a reduction in the improvement assessment is not warranted.

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<b>APPELLANT:</b>	<u>Stuart Rutledge</u>
<b>DOCKET NUMBER:</b>	<u>10-01968.001-R-1</u>
<b>DATE DECIDED:</b>	<u>March, 2013</u>
<b>COUNTY:</b>	<u>McHenry</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of a two-story brick and frame dwelling containing 3,138 square feet of living area that is 12 years old. Features include an unfinished walkout basement, central air conditioning, a fireplace and a 782 square foot garage. The subject property is located in Algonquin Township, McHenry County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's land and improvements were inequitably assessed. In support of this claim, the appellant submitted an assessment analysis of four suggested comparables located within two blocks from the subject. The comparables consist of two-story brick and frame dwellings that are 10 to 12 years old. Three comparables have unfinished basements and one comparable has a partial finished basement. Comparable 1 has a walkout basement. The comparables have central air conditioning, one or two fireplaces, and garages that contain from 637 to 801 square feet. The dwellings range in size from 2,930 to 3,322 square feet of living area and have improvement assessments ranging from \$100,466 to \$108,564 or from \$32.49 to \$34.29 per square foot of living area. The subject property has an improvement assessment of \$115,357 or \$36.76 per square foot of living area.

The comparables have lots ranging in size from 24,949 to 34,719 square feet of land area with land assessments ranging from \$29,756 to \$39,187 or from \$.90 to \$1.35 per square foot of land. The subject parcel has 58,939 square feet of land area and has a land assessment of \$39,727 or \$.67 per square foot of land area.

Based on this evidence, the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$155,084 was disclosed. In support of the subject's assessment, the board of review submitted an assessment analysis of the appellant's comparables and three additional assessment comparables.

The three additional assessment comparables are located within the subject's subdivision. The comparables consist of two-story frame or brick and frame dwellings that are from 8 to 13 years old. Two comparables have unfinished basements and one comparable has a partial finished basement. The comparables contain central air conditioning, one or two fireplaces, and garages that contain from 548 to 770 square feet. The dwellings range in size from 3,034 to 3,173 square feet of living area and have improvement assessments ranging from \$109,224 to \$127,929 or from \$36.00 to \$40.42 per square foot of living area. The subject property has an improvement assessment of \$115,357 or \$36.76 per square foot of living area.

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The comparables have lots ranging in size from 24,611 to 47,088 square feet of land area with land assessments ranging from \$33,581 to \$41,990 or from \$.71 to \$1.36 per square foot of land area. The subject parcel has 58,939 square feet of land area and a land assessment of \$39,727 or \$.67 per square foot of land area.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant argued unequal treatment in the assessment process. The Illinois Supreme Court has held that taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). The evidence must demonstrate a consistent pattern of assessment inequities within the assessment jurisdiction. The Board finds the appellant failed to overcome this burden of proof.

The parties submitted assessment information for seven suggested comparables for the Board's consideration. The Board finds both parties' comparables are similar to the subject in location, design, age, size and most features. The comparables have improvement assessments ranging from \$100,466 to \$127,929 or from \$32.49 to \$40.42 per square foot of living area. The subject property has an improvement assessment of \$115,357 or \$36.76 per square foot of living area, which falls within the range established by the similar comparable properties contained in this record. After considering any necessary adjustments to the comparables for differences when compared to the subject, the Board finds the subject's improvement assessment is supported and no reduction is warranted.

With respect to the subject's land assessment, the parties submitted land assessment information for seven comparables. All the comparables are located within the subject's subdivision, but are smaller in size when compared to the subject. They have land assessments ranging from \$29,756 to \$41,990 or from \$.71 to \$1.36 per square foot of land area. The subject property has a land assessment of \$39,727 or \$.67 per square foot of land area. The Board finds the subject's per square foot land assessment falls below the range established by the both parties' land comparables. Therefore, no reduction in the subject's land assessment is warranted.

The constitutional provision for uniformity of taxation and valuation does not require mathematical equality. The requirement is satisfied if the intent is evident to adjust the burden with a reasonable degree of uniformity and if such is the effect of the statute enacted by the General Assembly establishing the method of assessing real property in its general operation. A practical uniformity, rather than an absolute one, is the test. Apex Motor Fuel Co. v. Barrett, 20 Ill.2d 395 (1960). When an appeal is based on assessment inequity, the appellant has the burden to show the subject property is inequitably assessed by clear and convincing evidence. Although the comparables presented by the parties disclosed that properties located in the same area are not assessed at identical levels, all that the constitution requires is a practical uniformity, which appears to exist on the basis of the evidence.

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<b>APPELLANT:</b>	<u>Perumal Sarangabany</u>
<b>DOCKET NUMBER:</b>	<u>10-01696.001-R-1</u>
<b>DATE DECIDED:</b>	<u>November, 2013</u>
<b>COUNTY:</b>	<u>Kane</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of an owner occupied residential property located in Geneva Township, Kane County, Illinois.

The appellant submitted evidence before the Property Tax Appeal Board claiming the subject's assessment is not reflective of fair market value based on the subject's recent sale price and an appraisal of the subject property.

With respect to the subject's sale price, the appellant submitted Multiple Listing Service (MLS) sheets, a settlement statement, a Real Estate Transfer Declaration, and a sales contract. The MLS sheets revealed the subject property was initially offered for sale for \$485,000 in June 2008 before being removed from the open market. The subject property was relisted in December 2008 for \$474,500, which was reduced to \$462,000 before again being removed from the open market. In May 2009, the subject property was relisted for \$448,900. The documents related to the subject's sale show the property was purchased on July 28, 2009 for \$406,000. The appellant's appeal petition indicates the subject's sale was not a transfer between family or related corporations.

In further support that the subject's assessment was not reflective of market value, the appellant submitted a fee simple interest appraisal of the subject property. The appraisal report conveyed an estimated market value for the subject property of \$405,000 as of May 2, 2010, utilizing the sales comparison approach to value.

Based on this evidence, the appellant requested a reduction in the subject's assessment to \$135,000, which reflects an estimated market value of \$405,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessment of \$151,652 was disclosed. The subject's assessment reflects an estimated market value of \$454,592 when applying Kane County's 2010 three year median level of assessments of 33.36%. In support of the subject's assessment, the board of review submitted a critique of the appellant's appraisal by the township assessor. In addition, the township assessor prepared a revised grid analysis of the same six suggested comparable sales indentified in the appellant's appraisal, without adjustments. Neither the board of review nor the township assessor addressed or refuted the subject's July 2009 sale price of \$406,000. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

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The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Property Tax Appeal Board finds the best evidence of the subject's fair market value contained in this record is the July 2009 sale price of \$406,000. The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1<sup>st</sup> Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945). The Property Tax Appeal Board finds there is no evidence in this record showing the subject's sale was not an arm's-length transaction. In fact, after a review of the record the Board finds the evidence demonstrates the subject's transaction meets the fundamental elements of an arm's-length transaction. The buyer and seller were unrelated parties; neither party was under duress to buy or sell; and the subject property was exposed to the open market for a reasonable amount of time. The subject's assessment reflects an estimated market value of \$454,592, which is considerably greater than its purchase price. The board of review did not submit any evidence that would refute or even address the arm's-length nature of the subject's sale. Based on this evidence, the Board finds a reduction in the subject's assessment is warranted.

The Board gave less weight to the other valuation evidence submitted by the parties contained in this record. This valuation evidence does not overcome the subject's arm's-length sale price.

Since fair market value has been established, Kane County's 2010 three-year median level of assessments of 33.36% shall apply.

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<b>APPELLANT:</b>	<b>Robert Schnieders</b>
<b>DOCKET NUMBER:</b>	<b>10-02639.001-R-1</b>
<b>DATE DECIDED:</b>	<b>June, 2013</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a part two-story and part one-story brick and frame dwelling containing 2,484 square feet of living area. The home was originally built as a one-story dwelling in 1957, but had a second floor addition containing approximately 1,156 square feet built in 1998. In 2010, the kitchen was remodeled and a 100 square foot room addition constructed to the existing living room. Features include a partial finished basement, central air conditioning, a fireplace and a 624 square foot two-car detached garage. The dwelling is situated on 6,676 square feet of land area located in Downers Grove Township, DuPage County.

The appellant submitted evidence before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal.<sup>1</sup> In support of this argument, the appellant submitted an appraisal of the subject property prepared by a state licensed appraiser. The appraisal report conveyed an estimated market value of \$465,000 as of January 1, 2010, using the sales comparison approach to value.

Under the sales comparison approach to value, the appraiser selected three suggested comparable sales located from .55 of a mile to 1.30 miles from the subject. The comparables were reported to be comprised of two, two-story dwellings and a one and one-half story dwelling of frame exterior construction that are 3 to 54 years old. The dwellings are situated on sites ranging in size from 7,453 to 15,787 square feet of land area. Comparables 1 and 2 have full or partial finished basements and comparable 3 does not have a basement. Other features include central air conditioning, one fireplace and two-car garages. The dwellings range in size from 2,164 to 3,039 square feet of living area. The comparables sold from July 2009 to February 2010 prices ranging from \$420,000 to \$560,000 or from \$177.69 to \$198.30 per square foot for living area including land.

The appraiser adjusted the comparables for differences to the subject in land area, exterior construction, dwelling size, age and finished basement area or foundation type. The adjustments resulted in adjusted sale prices ranging from \$436,717 to \$502,722 or from \$153.09 to \$201.81 per square foot of living area including land. Based on these adjusted sales, the appraiser concluded the subject property had a fair market value of \$465,000 or \$187.20 per square foot of living area including land as of January 1, 2010.

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<sup>1</sup> Prior to hearing, the parties agreed to have the Property Tax Appeal Board issue a decision in this matter based on the evidence in the record without an oral hearing. The parties also stipulated to certain facts in this appeal: (1) The subject property is a single-family home; (2) In approximately 1998, a second story with approximately 1,156 was added; (3) In 2010, the kitchen was remodeled and a 100 square foot addition was constructed; (4) The cost of the 2010 construction and remodeling was approximately \$95,000; and (5) The subject dwelling contains 2,484 square feet of living area.

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The appraisal report indicates the subject property has an actual age of 1957 with an effective age of 13 to 15 years; however, the report did not disclose the kitchen remodel or the second floor or room additions in 1998 and 2010.

Based on this evidence, the appellant requested a reduction in the subject's assessed valuation.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$196,500 was disclosed. The subject's assessment reflects an estimated market value of \$590,445 or \$237.70 per square foot of living area including land using DuPage County's 2010 three-year median level of assessments of 33.28%.

In support of the subject's assessment, the board of review submitted property record cards with photographs, a location map, and an analysis of four suggested comparables. The location map depicts that board of review comparables 1 through 3 are located in close proximity within a few blocks of the subject property, while comparable 4 is located over ½ of a mile from the subject. The location map also depicts the comparables used by the appellant's appraiser are not located as close in proximity as board of review comparables 1 through 3. Additionally, the board of review claimed the appellant's appraiser's comparables 1 and 3 are located near Route 83, which is a less desirable location than the subject.

The comparables submitted by the board of review consist of three, part two-story and part one-story dwellings and a part one-story and part one and one-half story dwelling of frame exterior construction that were built from 1942 to 1973. Comparables 1 and 2 were remodeled or had room additions in 1971, 1976 and 1981. The analysis indicates comparables 1 and 2 have an effective age of 1968 and 1963, respectively. In addition, the analysis indicates comparables 1 through 3 are of a lesser quality construction than the subject. The dwellings are situated on lots ranging in size from 9,000 to 11,250 square feet of land area. The comparables have partial unfinished basements. Three comparables have one or two fireplaces and all the comparables have garages ranging in size from 300 to 550 square feet. The dwellings range in size from 2,037 to 2,376 square feet of living area. They sold from July 2009 to December 2010 for prices ranging from \$525,000 to \$575,000 or from \$237.80 to \$270.97 per square foot for living area including land.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Property Tax Appeal Board further finds no reduction in the subject property's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof.

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The appellant submitted an appraisal report estimating the subject property had a fair market value of \$465,000 or \$187.20 per square foot of living area including land as of January 1, 2010. The board of review submitted four comparable sales to support its assessed valuation of the subject property.

The Property Tax Appeal Board gave less weight to the appraisal report and value conclusion submitted by the appellant. The Board finds the value conclusion to be unpersuasive. The Board finds the comparable sales used by the appellant's appraiser were dissimilar due to their distant locations in relation to the subject. Furthermore, comparable 3 did not have a basement, unlike the subject, and comparable 2 was dissimilar in size and age when compared to the subject. Finally, as pointed out by the board of review and not refuted by the appellant, comparables 1 and 3 are located near Route 83, a less desirable location than the subject. The Board also gave less weight to comparable 4 submitted by the board of review due to its distant location in relation to the subject.

The Board finds comparables 1 through 3 submitted by the board of review are more similar and better reflect the subject's fair cash value. These comparables are located in close proximity to the subject and are comprised of part two-story and part one-story or part one-story and part one and one-half story dwellings that were built from 1942 to 1963, with effective ages of 1963 or 1968. The subject, a part two-story and part one-story dwelling, was originally built as a one-story dwelling in 1957, but had a second floor addition in 1998 and a small room addition in 2010. The comparables are similar in land area and have features that are generally similar to the subject, but had inferior partial unfinished basements as compared to the subject's partial finished basement. These most similar comparables sold from July 2009 to December 2010 for prices ranging from \$525,000 to \$565,000 or from \$237.80 to \$257.73 per square foot of living area including land. The subject's assessment reflects an estimated market value of \$590,445 or \$237.70 per square foot of living area including land, which is slightly less than the most similar sales contained in this record on a per square foot basis. After considering adjustments to the comparables for differences when compared to the subject, such as age and features, the Board finds the subject's assessed valuation is supported and no reduction is warranted.

Based on this analysis, the Property Tax Appeal Board finds the appellant failed to demonstrate the subject property was overvalued by a preponderance of the evidence and no reduction in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<u>Michael Shoffner</u>
<b>DOCKET NUMBER:</b>	<u>10-04848.001-R-1</u>
<b>DATE DECIDED:</b>	<u>October, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with a one-story single family dwelling that contains 1,626 square feet of living area. Features of the home include a crawl-space foundation, central air conditioning, a fireplace and a two-car attached garage. The dwelling is approximately 39 years old and has a brick and cedar exterior construction. The property has a 10,332 square foot site and is located in Addison, Addison Township, DuPage County.

The subject property is a residence that was the subject matter of an appeal before the Property Tax Appeal Board the prior year under docket number 09-03280.001-R-1. In that appeal, the appellant testified that he owns the property but his aunt lives in the home.<sup>1</sup>

For this 2010 appeal, the appellant contends that the subject property is overvalued. In support of this contention, the appellant listed five comparables in the Section V grid analysis of the appeal petition and submitted an appraisal estimating the subject property has a market value of \$237,000 as of January 1, 2010. The five sales listed by the appellant in Section V of the appeal petition were the same comparable sales contained in the sales comparison approach of the appraisal. The appellant's appraisal was prepared by the appellant himself, a State of Illinois Certified Residential Real Estate Appraiser.

From the appraisal report, the comparables were improved with one-story dwellings of brick construction that range in size from 1,350 to 1,853 square feet of living area. The comparables were located from .07 to .59 of a mile from the subject property. The dwellings range in age from 32 to 45 years old. Each comparable had a full or partial basement, four of which were partially finished or had a recreation room. Each comparable also had central air conditioning and a two-car garage. The comparables sold from April 2007 to June 2009 for prices ranging from \$248,000 to \$305,000 or from \$153.80 to \$216.43 per square foot of living area, including land. In the report the appellant made adjustments to the comparable sales for differences from the subject to arrive at adjusted sales prices ranging from \$234,500 to \$245,000. He was of the opinion the subject had an indicated value under the sales comparison approach of \$237,000.

Based on this evidence, the appellant requested the subject's assessment be reduced to \$79,000 to reflect the appraised value.

The board of review submitted its "Board of Review Notes on Appeals" wherein the final assessment of the subject property totaling \$98,840 was disclosed. The subject's assessment reflects an estimated market value of \$297,000, rounded, or approximately \$182.66 per square

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<sup>1</sup> Given these facts, the subject residential property is not an owner-occupied residential dwelling that would be subject to the provisions of Section 16-185 of the Property Tax Code (35 ILCS 200/16-185).

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foot of living area, including land, using the 2010 three-year median level of assessments for DuPage County of 33.28%.

In support of the subject's 2010 assessment, the board of review submitted its Addendum noting that the appellant, himself, prepared an appraisal of the subject property. In addition, the board of review submitted Exhibit 1 consisting of a memorandum and data gathered by the Addison Township Assessor.

As to the appellant's comparable sales, the assessor contends that only comparable #5 is in the same neighborhood as the subject and "land value is slightly less in the other neighborhoods." The assessor further acknowledged that the subject dwelling does not have a basement and that assessments in the subject's neighborhood would add about \$3.00 per square foot. In a spreadsheet, the assessor reiterated the comparables from the appellant's appraisal and noted four of the properties were in neighborhood codes A12 or A14. The assessor also reported that appraisal comparable #1 sold in January 2011 for \$248,000 or \$183.57 per square foot of living area, including land.

In support of the subject's estimated market value, the township assessor submitted descriptions and assessment information on two comparable sales located in the A12 neighborhood along with a map depicting both parties' comparables. These one-story dwellings of brick or brick and frame exterior construction were 33 and 36 years old, respectively. The homes contain 1,506 and 1,753 square feet of living area and feature basements, one of which is 50% finished. Each home has central air conditioning and a garage. These properties sold in August 2009 and April 2010 for price of \$305,000 and \$327,500 or \$186.82 and \$202.52 per square foot of living area, including land.

The assessor's submission also included a third comparable with assessment equity data. This property was located in the subject's neighborhood code as assigned by the assessor.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code §1910.65(c). The Board finds the evidence in the record does support a reduction in the subject's assessment.

Initially the Board finds the appellant submitted an appraisal of the subject property which he prepared. The Board finds the fact that the appellant is also the appraiser creates a conflict in that the appellant has a present interest in the property and a direct pecuniary interest in the outcome of the appeal proceeding if the assessment is reduced. The Board finds the appellant is acting as both an advocate for an assessment reduction and an expert who is to provide an

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unbiased opinion of market value as of the assessment date at issue. Due to this conflict the Board finds that the appellant's estimate of value as contained in the appraisal is given less weight. The Board, however, will examine the sales submitted by the parties in determining the correct assessment of the subject property.

The Board finds the best comparables in the record with respect to location include appellant's comparables #1 through #3 and #5 along with the two comparable sales submitted by the assessor on behalf of the board of review. The appellant's comparable #4 is depicted as most distant from the subject property in the location map presented by the assessor. These six comparable sales most proximate in location to the subject were also similar to the subject in age and relatively similar to the subject dwelling in above grade living area. These properties sold from April 2007 to January 2011 for prices ranging from \$248,000 to \$327,500 or from \$153.80 to \$202.52 per square foot of living area, including land. The evidence disclosed, however, that the majority of these comparables were superior to the subject with all brick construction and basements. The subject's total assessment of \$98,840 reflects a market value of \$297,000 or approximately \$182.66 per square foot of living area, including land, which is at the high end of the range of the overall market value established by these comparables and is also within the range of the comparables on a square foot basis. After considering these comparable sales and weighing the evidence, the Board finds a reduction to the subject's assessment is justified based on the fact the subject property is inferior to these comparables due to the fact it has no basement and is not of all brick construction.

In conclusion, the Board finds a reduction in the subject's assessment is justified.

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<b>APPELLANT:</b>	<u>Stanley Siembida</u>
<b>DOCKET NUMBER:</b>	<u>07-29143.001-R-1</u>
<b>DATE DECIDED:</b>	<u>May, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of 2,760 square feet of land improved with a 120-year old, two-story, masonry, mixed-use building. The improvement contains 3,790 square feet of building area including two apartments and one commercial unit.

The appellant raised two arguments: first, that there was unequal treatment in the assessment process; and second, that the subject's market value is not accurately reflected in its assessment due to a partial vacancy within the subject property as the bases of this appeal.

In support of the equity argument, the appellant submitted descriptive and assessment data as well as photographs for four suggested comparables. The properties were improved with two-story or three-story, mixed-use buildings with either masonry or frame and masonry exterior construction. They ranged: in age from 99 to 122 years; in improvement size from 3,250 to 8,427 square feet of living area; and in improvement assessments from \$8.35 to \$12.38 per square foot. Amenities vary per property. The subject's improvement assessment is \$13.97 per square foot of building area.

As to the overvaluation argument, the appellant asserted that the subject suffered from vacancy. In support of this assertion, an affidavit was submitted wherein the affiant stated that the commercial unit was vacant from January through August of 2007. Based upon this analysis, the appellant requested a reduction in the subject's assessment.

At hearing, the appellant's attorney asserted that he had no personal knowledge as to whether the subject was purchased as vacant in August, 2004.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$71,064. This assessment reflected a total market value of \$707,809 or \$186.76 per square foot based upon the application of the Illinois Department of Revenue's three-year median level of assessment for tax year 2007 of 10.04% for class 2 property, as is the subject. The board grid analysis reflects that the subject was purchased in August, 2004, for a price of \$420,000. Further, the subject's property characteristic printout reflects that the subject is not an owner-occupied property and that permits dated August, 2006, were issued for major new construction.

In addition, the board of review submitted descriptive and assessment data relating to four suggested comparables. The properties are improved with a two-story or three-story, masonry, mixed-use building with a partial basement. The improvements range: in age from 39 to 128 years; in improvement size from 3,300 to 4,239 square feet of building area; in units from three to four; and in improvement assessments from \$15.58 to \$17.00 per square foot. As a result of its analysis, the board requested confirmation of the subject's assessment.

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At hearing, the board's representative rested on the written evidence submissions, while testifying that he had no personal knowledge of either whether the subject sold in an arm's length transaction or whether the board of review accorded assessment reductions based upon property vacancy.

After considering the arguments and/or testimony as well as reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant contends unequal treatment in the subject's improvement assessment as the basis of the appeal. Taxpayers who object to an assessment on the basis of lack of uniformity bear the burden of proving the disparity of assessment valuations by clear and convincing evidence. Kankakee County Board of Review v. Property Tax Appeal Board, 131 Ill.2d 1 (1989). After an analysis of the data, the Board finds that the appellant has not met this burden.

The Board finds that appellant's comparable #2 as well as the board of review's comparables #1 through #3 are most similar to the subject in style, exterior construction, improvement size and age. In analysis, the Board accorded most weight to these comparables. These comparables ranged in improvement assessments from \$12.38 to \$17.00 per square foot of building area. The subject's improvement assessment at \$13.97 per square foot is within the range established by these comparables. Therefore, the Board finds no reduction is warranted based upon this issue.

As to the appellant's second issue, when market value is the basis of the appeal, the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist, 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. (86 Ill.Adm.Code 1910.65(c)). Having considered the evidence presented, the Board finds that the appellant has not met this burden and that a reduction is not warranted.

The Board finds that the subject's sale occurred in August, 2004; however, there was no evidence either that this sale was an arm's length transaction or that the property was vacant at the time of purchase. Moreover, the subject's printouts reflect that the owner obtained permits in August, 2006, for major new construction; however, there was no information as to whether this construction, if any, was undertaken. Further, there was no market data submitted to support the appellant's vacancy argument. Overall, the Board finds that the appellant submitted less than definitive data on this issue. Therefore, the Board finds that a reduction is not warranted.

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<b>APPELLANT:</b>	<u>Ricky Smith</u>
<b>DOCKET NUMBER:</b>	<u>10-03940.001-R-1</u>
<b>DATE DECIDED:</b>	<u>May, 2013</u>
<b>COUNTY:</b>	<u>Sangamon</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is improved with a one-story dwelling of brick and vinyl exterior construction containing 1,697 square feet of above grade living area. Features of the home include a basement, central air conditioning, a fireplace and a two-car garage. The property is located in Spaulding, Clear Lake Township, Sangamon County.

The appellant is contesting the assessment for the 2010 tax year based on overvaluation. In support of this argument the appellant submitted evidence disclosing the subject property was purchased in August 2007 for a price of \$89,000. The appellant completed portions of Section IV – Recent Sale Data of the appeal disclosing the property was sold through a Realtor and had been advertised on the market for 2 weeks in a local newspaper and in the Multiple Listing Service (MLS). The appellant submitted a copy of the MLS listing of the subject indicating the asking price was \$99,500 and the property sold for a price of \$89,000 on August 22, 2007. The appellant did not answer the question whether the parties to the transfer were related. Additionally, he did not identify who the property was purchased from but stated "see ATTCH 1." However, the attachment did not clearly identify the seller. The record further disclosed that the appellant filed the appeal from the notice of an application of a township equalization factor increasing the assessment from \$41,380 to \$41,570. The notice indicated the equalized assessment reflected a market value of \$124,710. The appellant also submitted a copy of a decision issued by the Property Tax Appeal Board for the 2008 tax year under Docket No. 08-02436.001-R-1. In that appeal the Property Tax Appeal Board issued a decision on October 22, 2010 reducing the subject's assessment to \$29,334. Based on this evidence the appellant requested the subject's assessment be reduced to \$29,334.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$41,570 was disclosed. In support of the assessment the board of review submitted a copy of an Illinois Real Estate Transfer Declaration (PTAX-203) disclosing the subject property sold in June 2011 for a price of \$188,000. The transfer declaration indicated the property was advertised for sale and there was no showing that the sale was between related individuals. The board of review also asserted the property was not owner occupied. Based on this evidence the board of review requested the subject's assessment be increased to reflect the June 2011 purchase price.

In rebuttal the appellant asserted he occupied the subject dwelling until the property was sold in June 2011. In support of the assertion that he was living in the home the appellant submitted a copy of a bill from Columbia Insurance Group entitled Homeowners Policy Declarations indicating the owner occupied the dwelling. The policy period was from 8/22/10 to 8/22/11. The dwelling coverage limit on the policy was \$221,500.

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After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is not warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). A contemporaneous sale between two parties dealing at arm's length is not only relevant to the question of fair cash value but practically conclusive on the issue on whether the assessment is reflective of market value. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967). Furthermore, the sale of a property during the tax year in question is a relevant factor in considering the validity of the assessment. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369, 375 (1<sup>st</sup> Dist. 1983). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

Initially, the Board finds the most probative evidence of market value in this record is the sale of the subject property that occurred in June 2011 for a price of \$188,000. The board of review submitted the Illinois Real Estate Transfer Declaration documenting the sale. This document also indicated the sale had the elements of an arm's length transaction. This sale occurred more proximate in time to the assessment date at issue than the appellant's purchase of the property in August 2007 for a price of \$89,000.

The Board further finds that the subject property was the subject matter of an appeal before the Property Tax Appeal Board in the 2008 and 2009 tax years under docket numbers 08-02436.001-R-1 and 09-06118.001-R-1. (See 86 Ill.Admin.Code 1910.90(i)). In those appeals the Property Tax Appeal Board issued decisions lowering the assessment of the subject property to \$29,334. Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, **unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based**, or unless the decision of

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the Property Tax Appeal Board is reversed or modified upon review. (Emphasis added.)

The record indicates the subject property is an owner occupied dwelling. Pursuant to section 1910.90(i) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code 1910.90(i)) the Board takes notice that the 2010 tax year is within the same general assessment period as the 2008 and 2009 tax years. (See 35 ILCS 200/9-215.) The evidence disclosed; however, the subject property sold in an arm's length transaction in June 2011 establishing a fair cash value significantly above the fair cash value on which the Board's decisions were based for the 2008 and 2009 tax years. Based on the June 2011 sale the Board finds the assessments as established in the prior years should not remain in effect.

The Board finds the subject's assessment reflects a market value below the June 2011 purchase price. However, considering the fact the subject sold in August 2007 for a price of \$89,000 and sold again in June 2011 for a price of \$188,000, the subject's assessment for the 2010 tax year reflecting a market value of \$124,710 is appropriate and no change in the assessment is justified.

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<b>APPELLANT:</b>	<u>Michael Smoron</u>
<b>DOCKET NUMBER:</b>	<u>09-03825.001-R-1</u>
<b>DATE DECIDED:</b>	<u>January, 2013</u>
<b>COUNTY:</b>	<u>McHenry</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject parcel of approximately 31,715 square feet of land area is located on a golf course in Turnberry Subdivision. The property is improved with a 1.5-story Cape Code frame and brick exterior constructed home built in 1978. The dwelling contains approximately 3,484 square feet of living area with a partial unfinished basement, central air conditioning, a fireplace, a sunroom and a two-car garage. The subject property is located in Lakewood, Grafton Township, McHenry County.

The appellant's appeal is based on overvaluation of the subject property. In support of this market value argument, the appellant submitted both an appraisal and three additional comparable sales.

The appraisal was prepared by Lisa M. Woo of Illinois Elite Appraisals for purposes of a refinance transaction wherein the client was ABI Mortgage, Inc. To estimate the fee simple rights of the property, the appraiser used two of the three traditional approaches to value and concluded an estimated market value of \$480,000 for the subject property as of March 23, 2009.

Under the cost approach, the appraiser estimated the subject's land value at \$100,000 based on recent area land sales. Using the Marshall & Swift Cost Handbook, the appraiser determined a replacement cost new for the subject dwelling including the basement and garage of \$436,992. Physical depreciation of \$4,370 was calculated resulting in a depreciated value of improvements of \$432,622. Next, a value for site improvements of \$3,000 was added. Thus, under the cost approach, the appraiser estimated a market value of \$535,622 for the subject.

Under the sales comparison approach, the appraiser used three sales and one listing of comparable homes located between 0.73 and 1.04-miles from the subject property. The parcels range in size from 20,034 to 27,294 square feet of land area. The appraiser also noted the subject backs to the golf course and as such has a golf course "view." One comparable also has a "golf course" view. The comparable parcels are improved with "custom" dwellings of stucco or brick and cedar exterior construction which range in age from 3 to 10 years old. Although the subject's actual age was 31 years old, the appraiser opined it had an effective age of 1 year old. The comparable dwellings range in size from 3,150 to 3,549 square feet of living area. Each of the comparables has a full basement, two of which have finished area. The homes have central air conditioning, one or two fireplaces and a three-car garage. The three sales occurred between June 2008 and January 2009 for prices ranging from \$475,000 to \$515,000 or from \$133.84 to \$163.49 per square foot of living area including land. The listing occurred in November 2008 and had a reported asking price of \$600,000 or \$177.41 per square foot of living area including land.

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In comparing the properties to the subject, the appraiser made adjustments for time to the listing and for differences such as view, dwelling size, bathroom count, basement finish, garage stalls and number of fireplaces. This resulted in adjusted sales prices for the comparables ranging from \$474,000 to \$570,360 or from \$133.56 to \$168.65 per square foot of living area, land included. From this process, the appraiser estimated a value for the subject by the sales comparison approach of \$480,000 or \$137.77 per square foot of living area including land.

In the final reconciliation, the appraiser concluded an estimate of value of \$480,000 since the sales comparison approach best reflects the actions of buyers and sellers.

In a grid analysis, the appellant also submitted information on three sales comparables located in close proximity to the subject property. The parcels range in size from 29,823 to 34,928 square feet of land area and are improved with a Cape Cod and two, two-story dwellings of brick or frame exterior construction. The homes range in age from 31 to 36 years old and range in size from 2,400 to 3,037 square feet of living area. Each home has a full basement, two of which are finished. Features include central air conditioning, one or two fireplaces and a garage ranging in size from 200 to 300 square feet of building area. The sales occurred from May to July 2009 for prices ranging from \$330,000 to \$365,000 or from \$120.18 to \$135.64 per square foot of living area, including land. The relationship of these properties to the golf course, if any, was not disclosed in the submission.

Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$140,000 which would reflect a market value of approximately \$420,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$171,650 was disclosed. The final assessment of the subject property reflects a market value of \$515,930 or \$148.09 per square foot of living area including land using the 2009 three-year median level of assessments for McHenry County of 33.27%.

In response to the appellants' appraisal, the board of review submitted a letter prepared by the Grafton Township Assessor and contended that there were substantial value differences between homes like the subject which were located on the golf course and those that were not on the golf course. To support this proposition, the board of review included two separate analyses. In addition, the assessor criticized the purpose of the appraisal as for a refinance transaction, the dwelling size adjustment amount of \$35 per square foot, the lack of adjustment for lot size differences and adjustment amounts for parcels not on the golf course as not reflecting actual market differences in the area. In addition, the assessor contended that the appraisal without testimony at hearing was hearsay.

In a spreadsheet of "non-golf course" properties, there were six parcels that range in size from 16,926 to 27,294 square feet of land area. The parcels are improved with one-story or two-story dwellings of frame and masonry exterior construction. The homes range in age from 3 to 11 years old and range in size from 3,150 to 3,785 square feet of living area. Four comparables have a basement and each has central air conditioning, one or two fireplaces and a garage ranging in size from 681 to 1,085 square feet of building area. One comparable has a pool and one has a pergola. These properties sold between June 2008 and February 2009 for prices

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ranging from \$475,000 to \$572,500 or from \$133.84 to \$163.49 per square foot of living area, including land.

In a grid analysis of "golf course" properties, there were three parcels that range in size from 9,315 to 18,500 square feet of land area; each of these comparables was located in the Boulder Ridge subdivision. The parcels were improved with a two-story and two, one-story dwellings of brick or frame and brick exterior construction. The homes range in age from 6 to 19 years old and range in size from 2,533 to 3,613 square feet of living area. The comparables feature full or partial basements, one of which is English style and one of which is walkout style. Each has central air conditioning, one or two fireplaces and a garage ranging in size from 686 to 860 square feet of building area. These properties sold between April 2008 and August 2009 for prices ranging from \$420,000 to \$699,000 or from \$165.81 to \$193.47 per square foot of living area including land.

Based on the foregoing evidence, the board of review requested confirmation of the subject's estimated market value as reflected by its assessment.

In written rebuttal, the appellant first addressed the criticisms of the assessor regarding the appraisal report with regard to a hearsay argument, asserted there was a waiver of objections to the report at the board of review level and noted that no questions were raised regarding the accuracy of the data or comparability of the properties set forth in the report.

Next, the appellant argued that three of the six "non-golf course" comparables were located in different municipalities than the subject and two of these six properties were within Lakewood, but not in the subject's subdivision and differed from the subject in age.<sup>1</sup> As to the three "golf course" comparables, the appellant argued that these have more plumbing fixtures than the subject and none is in the subject's village or subdivision. Instead, the appellant contends that these "golf course" properties are "in a private gated community with private security" which the subject does not enjoy. As to the subject's golf course, the appellant wrote:

Evidence was provided at the subject hearing [before the McHenry County Board of Review] that one of the differences with the golf course proximate to appellant's property is that it became defunct and a deed in lieu of foreclosure was tendered by the golf course owner to the relevant lender. The golf course which is cited by the Assessor is Boulder Ridge, a private country club which is viable and maintains the Boulder Ridge Golf Course.

Lastly, appellant submitted an appraisal prepared by Gerald Mason for a refinance transaction with an opinion of the subject's estimated market value as of April 13, 2011 of \$375,000.

Pursuant to the rules of the Property Tax Appeal Board, rebuttal evidence is restricted to that evidence to explain, repel, counteract or disprove facts given in evidence by an adverse party.

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<sup>1</sup> The appellant specifically criticized a property known as 9575 Player Court as being in "a different development and entirely separate subdivision platted in 1997 . . . [and] was built in 1999." The Property Tax Appeal Board takes notice that this property was sale #3 in the appellant's appraisal. Similarly, the appellant criticized the assessor's presentation of the property at 6180 Stansbury which was sale #2 in the appellant's appraisal.

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(86 Ill.Admin.Code §1910.66(a)). Moreover, rebuttal evidence shall not consist of new evidence such as an appraisal or newly discovered comparable properties. (86 Ill.Admin.Code §1910.66(c)). In light of these Rules, the Property Tax Appeal Board has not considered the new appraisal prepared by Gerald Mason submitted by appellant in conjunction with his rebuttal argument.

As an initial matter, the arguments made by both parties regarding the appellant's appraisal in terms of hearsay and "objections"/waiver of objections will be addressed. The question of hearsay with regard to the appellant's appraisal could have arisen if either party to this proceeding before the Property Tax Appeal Board had requested a hearing on this matter. At the time of such hearing, if the author of the appraisal was not present for testimony and/or cross-examination, an appropriate objection to the report would be hearsay. However, in this proceeding neither party requested a hearing and thus, the appraisal report stands as part of the appellant's evidence before the Property Tax Appeal Board. In addition, as set forth in the Property Tax Code, "[a]ll appeals [before the Property Tax Appeal Board] shall be considered de novo." (35 ILCS 200/16-180) As such, the assessing officials are entitled to submit responsive evidence to the appellant's appraisal report before the Property Tax Appeal Board and the appellant likewise can then file rebuttal as was done in this proceeding. Thus, there is no issue of "waiver" of any objection to the appraisal report as was argued by the appellant in his rebuttal submission. Instead, there is submission by the parties of competing market value evidence and respective criticisms of such evidence by each of the parties to this proceeding.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds that a reduction in the subject's assessment is warranted.

The appellant argued that the subject's assessment was not reflective of market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code §1910.65(c). The Board finds this burden of proof has been met and a reduction in the subject's assessment is warranted.

The Board finds the appellant submitted an appraisal of the subject property with a final value conclusion of \$480,000 along with three additional comparable sales selected by the appellant. Based on this evidence, the appellant requested a total assessment reflective of a market value of \$420,000 for the subject property. In response, the board of review criticized adjustments and lack of adjustments for location of the appraisal comparables since the subject is located on a golf course. Furthermore, to support the subject's estimated market value based on its assessment, the board of review presented three sales located on a golf course which occurred proximate to the assessment date at issue. The appellant in rebuttal pointed out that those three sales were of dissimilar properties to the subject in location (village, subdivision, gated community with private security) and the golf course was private.

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The Property Tax Appeal Board finds that, despite some of the differences between the subject property and the comparables utilized in terms of "golf course" location, the appellant's appraiser adjusted the comparables for differences such as view, size and other amenities in order to arrive at a value conclusion. After examining the entire record, the Property Tax Appeal Board finds that the appraisal submitted by the appellant estimating the subject's market value of \$480,000 is the best evidence of the subject's market value in the record. In contrast, the three "golf course" sales presented by the board of review lacked adjustments for differences and were shown to be dissimilar to the subject in location, age and amenities, including, but not limited to, being in a gated community with private security.

Based upon the market value as stated above, the Property Tax Appeal Board finds that a reduction is warranted. Since market value has been established, the three-year median level of assessments for McHenry County for 2009 of 33.27% shall be applied.

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<b>APPELLANT:</b>	<u>South Shore Rental, LLC</u>
<b>DOCKET NUMBER:</b>	<u>08-30614.001-R-1</u>
<b>DATE DECIDED:</b>	<u>January, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property contains 4,125 square feet of land improved with a 141 year old, one-story, frame, residential dwelling. Features of the home include 866 square feet of living area, one full bathroom, a full basement, and a two and one-half car garage. The property is located in Lake Township.

The subject property was also the subject matter of an appeal before the Board the prior year under docket #07-30883-R-1. In that appeal, the Board rendered a decision lowering the assessment of the subject property to \$4,554 based on the joint agreement of the parties. In the 2008 appeal, the appellant's attorney asserted that 2007 and 2008 were within the same general assessment period for residential property. Beyond this assertion and the submission of a copy of the 2007 Board decision, the appellant submitted sales data for the subject. The appellant's petition indicated that the property was purchased on March 1, 2004 for a price of \$45,000. In addition, the appellant's pleadings stated that the transfer was not between related parties; the subject was advertised for sale; and that the seller's mortgage was not assumed.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of the subject property totaling \$10,124 was disclosed. The board of review submitted descriptions and assessment information on four comparables to demonstrate the subject was being assessed uniformly. These properties were located within a one-quarter mile from the subject and were improved with a one-story, frame, single-family dwelling with a full basement. They ranged: in age from 110 to 131 years; in improvement size from 756 to 900 square feet of living area; and in improvement assessments from \$7.50 to \$11.48 per square foot.

Further, the board of review submitted a brief with supporting documentation. The brief argued that the clear language of Section 16-185 is mandatory and unambiguous in that a subject property must be a "residence occupied by the owner" in order for any previous assessment decision from the Board to be carried forward into the subsequent years of a general reassessment period. Exhibit A are copies of documents from the Cook County Recorder of Deeds Office which reflect that the subject property is owned by South Shore Rentals LLC pursuant to a purchase on or about March, 2004. Exhibit B are copies of documents from the Illinois Secretary of State's Office. These documents reflect that South Shore Rentals LLC is a member of Neiman Partners Inc., while Exhibit C is a printout from the county assessor's website reflecting that the property received a homeowner's exemption for the 2008 tax year. In conclusion, the board of review asserted that a property which is corporately owned cannot be an occupied residence to satisfy the requirements of Section 16-185. Moreover, the board's brief argues that the Board could apply the 2007 assessment to the instant case only if the property was proven to be owner-occupied.

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After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. Pursuant to Section 16-185 of the Property Tax Code (35 ILCS 200/16-185), the Board finds the prior year's decision should be carried forward to the subsequent year subject only to equalization.

Section 16-185 of the Property Tax Code (35 ILCS 200/16-185) provides in part:

If the Property Tax Appeal Board renders a decision lowering the assessment of a particular parcel on which a residence occupied by the owner is situated, such reduced assessment, subject to equalization, shall remain in effect for the remainder of the general assessment period as provided in Sections 9-215 through 9-225, unless that parcel is subsequently sold in an arm's length transaction establishing a fair cash value for the parcel that is different from the fair cash value on which the Board's assessment is based, or unless the decision of the Property Tax Appeal Board is reversed or modified upon review.

The record disclosed the Board issued a decision reducing the subject's 2007 assessment pursuant to a joint agreement of the parties. However, the record fails to indicate that the subject property is an owner-occupied residence, even though tax years 2007 and 2008 are within the same general assessment period. In addition, the appellant failed to submit any evidence to rebut the board of review's arguments. Therefore, based upon the aforementioned section of the Property Tax Code, the Board finds that a reduction in the subject's assessment is not warranted.

Moreover, when overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has not met this burden and that a reduction is not warranted.

As to this issue, the Board finds that the subject's sale in March, 2004, is too distant in time to be truly reflective of the subject's market value as of January 1, 2008. Therefore, the Board found this argument unpersuasive.

Further, the board of review submitted four equity comparables located within the subject's neighborhood, which are similar to the subject in style, exterior construction, improvement size and age. These comparables were accorded appropriate weight by the Board in its analysis. These comparable range in improvements assessments from \$7.50 to \$11.48 per square foot of living area. The subject's improvement assessment of \$7.50 per square foot is at the low end of the range established by these comparables.

As a result of this analysis, the Board finds that the appellant has not met its burden and that a reduction is not warranted.

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<b>APPELLANT:</b>	<u>Alex &amp; Sydney Tiria</u>
<b>DOCKET NUMBER:</b>	<u>09-04068.001-R-1</u>
<b>DATE DECIDED:</b>	<u>January, 2013</u>
<b>COUNTY:</b>	<u>McHenry</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is improved with a two-story single family dwelling of frame and masonry exterior construction that contains approximately 3,500 square feet of living area. The dwelling is 17 years old. The property has a full finished walkout style basement, central air conditioning, a fireplace, and a 2.5-car garage of 394 square feet of building area. The property is located in Crystal Lake, Algonquin Township, McHenry County.

The appellants through legal counsel submitted a residential appeal contending overvaluation based on a recent sale of the subject property. In support of this argument, the appellants reported that the subject property was purchased in September 2009 for a price of \$317,000. To support this assertion, the appellants included a copy of the Settlement Statement. The appellants further indicated the subject property was sold by the previous owners through Re/Max Realty and agent Marj Carpenter. The property was advertised on the open market using the Multiple Listing Service for 19 days and the parties to the transaction were not related.

Based on this evidence, the appellants requested a reduction in the subject's total assessment to \$105,667 which would reflect a market value of approximately \$317,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$112,822 was disclosed. The subject's assessment reflects a market value of approximately \$339,110 when applying the 2009 three year median level of assessments for McHenry County of 33.27%.

In support of the subject's estimated market value as reflected by its assessment, the board of review presented evidence of both the August 2008 and the September 2009 arm's length sales transactions involving the subject property. The board of review reported that the 2008 sale price was \$360,000 and confirmed that the 2009 sale price was \$317,000. Based on these sales of the subject property, the board of review acknowledges this was a declining market reflective of approximately .077% per month. According to the board of review, applying the upward or downward adjustment to either sale price to arrive at the assessment date of January 1, 2009 results in an estimated market value of the subject property greater than its estimated market value based on its assessment.<sup>1</sup>

Based on this evidence, the board of review requested confirmation of the subject's assessment.

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<sup>1</sup> Adjusting the August 2008 price as suggested results in a price of \$346,772 as of January 2009 and adjusting the September 2009 price as suggested results in a price of \$346,763.

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After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellants contend the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in the record does not support a reduction in the subject's assessment.

The appellants contend the subject's assessment should be reduced based on the sale of the subject of \$317,000 in September 2009. The evidence also disclosed that the subject sold for \$360,000 in August 2008. Thus, the sale of the subject reported by the appellants occurred about 9 months after the assessment date at issue and the sale of the subject reported by the board of review occurred about 4 months prior to the assessment date at issue.

Ordinarily, property is valued based on its fair cash value (also referred to as fair market value), "meaning the amount the property would bring at a voluntary sale where the owner is ready, willing, and able to sell; the buyer is ready, willing, and able to buy; and neither is under a compulsion to do so." Illini Country Club v. Property Tax Appeal Board, 263 Ill.App.3d 410, 418 (4<sup>th</sup> Dist. 1994); see also 35 ILCS 200/9-145(a). The Illinois Supreme Court has held that a contemporaneous sale of the subject property between parties dealing at arm's length is relevant to the question of fair market value. People ex rel. Korzen v. Belt Ry. Co. of Chicago, 37 Ill.2d 158, 161, 226 N.E.2d 265, 267 (1967). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1<sup>st</sup> Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc., 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

In light of the holdings above concerning fair cash value, the Board finds that the two sales of the subject property which bracket the assessment date at issue of January 1, 2009 do not support the appellants' contention that the subject property was overvalued as of January 1, 2009. The subject has an estimated market value of \$339,110 based on its assessment which is between the August 2008 sale price of \$360,000 and the September 2009 sale price of \$317,000. Based on these two sales of the subject which bracket the estimated market value as reflected by its assessment, the Board finds that the appellants have failed to show overvaluation by a preponderance of the evidence.

Based on the foregoing analysis, the Property Tax Appeal Board finds the appellants have failed to establish that the subject property is overvalued based on its assessment and no reduction in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<u>Daniel Tischler</u>
<b>DOCKET NUMBER:</b>	<u>11-01598.001-R-1</u>
<b>DATE DECIDED:</b>	<u>November, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with a one-story frame and brick dwelling<sup>1</sup> on a concrete slab foundation. The home contains 1,404 square feet of living area and was constructed in 1959 with an addition that was built in 1965. Features of the home include a garage of 440 square feet of building area. The property has a 14,476 square foot site and is located in Darien, Downers Grove Township, DuPage County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted two documents in support of the appeal basis "recent sale," but the appellant failed to complete Section IV as required in the Residential Appeal petition.

The appellant submitted page one of a Final Statement disclosing a settlement date of February 6, 2009 and a contract sales price of \$150,500. The appellant also submitted a copy of the Multiple Listing Service sheet disclosing the subject property was originally listed for sale for \$164,900 in September 2008 and was sold after 126 days on the market for \$150,500. The property remarks include:

Sold in "as is" condition by corporate seller. . . . Needs some repairs and updates externally. . . .

Based on this evidence, the appellant requested a reduction in the subject's assessment to \$50,166 which would reflect a market value of approximately \$150,500.

The board of review submitted its "Board of Review Notes on Appeals" wherein the subject's total assessment of \$82,010 was disclosed. The subject's assessment reflects a market value of \$247,390 or \$176.20 per square foot of living area, including land, when applying the 2011 three year average median level of assessment for DuPage County of 33.15% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

In support of the assessment the board of review submitted a memorandum and spreadsheet with five comparable sales gathered by the Downers Grove Township Assessor. In the memorandum, the assessor first reports that the subject's purchase in January 2009 was a Bank REO.

Second, the assessor reported that a certified letter was mailed on January 24, 2013 to appellant's legal counsel requesting an interior/exterior inspection. The letter was signed for on January 29,

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<sup>1</sup> The assessor's memorandum described the subject as a frame dwelling. The assessor's grid analysis described the subject as a brick dwelling. The hand-written property record card attached to the board of review's evidence depicts exterior construction as ½ frame and ½ brick; the computer generated property characteristics sheet describes the dwelling as brick.

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2013. As of February 13, 2013, the assessor's office has not been contacted by counsel to schedule the inspection "in order to verify the condition and physically view the property in question for remodeling or updates." Therefore, the memorandum states:

We would like to invoke Section 1910.94 Inspection of Subject Property – Effect of Denial by Taxpayer or Property Owner, as we have not received correspondence regarding our request.

The assessor has no statement detailing efforts at consultation and/or failed reasonable attempts to resolve differences over issues involving inspection. (86 Ill.Admin.Code §1910.94(b)).

In support of the subject's estimated market value based on its assessment, the assessor provided a spreadsheet of five comparable sales located in the same neighborhood code assigned by the assessor as the subject property. The comparables are improved with one-story frame or brick dwellings that range in size from 1,040 to 1,212 square feet of living area. The dwellings were constructed from 1957 to 1962. Three of the comparables include a full unfinished basement, and each home has a garage ranging in size from 440 to 780 square feet of building area. The comparables have sites ranging in size from 12,250 to 18,990 square feet of land area. The comparables sold from December 2009 to November 2010 for prices ranging from \$170,000 to \$261,000 or from \$157 to \$215 per square foot of living area, including land, rounded.

Based on this evidence, the board of review requested confirmation of the subject's estimated market value of \$247,390 or \$176.20 per square foot of living area, including land, as reflected by its assessment.

As written rebuttal, counsel for the appellant contended that since the appeal was based upon a recent sale and work on the property after purchase "was primarily cosmetic in nature for the purpose of attracting a tenant" the question of condition is not relevant in the absence of "significant renovation or an addition to the improvements." However, at the time the rebuttal was filed, contact information was also being provided to the assessor to allow the requested inspection of the property to occur.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

With regard to the assessor's inspection request, Section 1910.94 of the rules of the Property Tax Appeal Board state:

- a) No taxpayer or property owner shall present for consideration, nor shall the Property Tax Appeal Board accept for consideration, any testimony, objection, motion, appraisal critique or other evidentiary material that is offered to refute, discredit or disprove evidence offered by an opposing party regarding the description, physical characteristics or condition of the subject property when the taxpayer or property owner denied a request made in writing by the board of review or a taxing body, during the time when the Board was accepting

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documentary evidence, to physically inspect and examine the property for valuation purposes. [Emphasis added.]

b) Any motion made to invoke this Section shall incorporate a statement detailing the consultation and failed reasonable attempts to resolve differences over issues involving inspection with the taxpayer or property owner.

As set forth above, the assessor made the inspection request, not the board of review. Thus, the request does not comply with Section 1910.94 for purposes of enforcement before the Property Tax Appeal Board. Furthermore, as set forth in subsection (b) a motion must be made to invoke this section and the board of review made no such motion. Thus, the Property Tax Appeal Board gives no weight to the arguments made by the assessor regarding the failure to respond to an inspection request.

Moreover, the cited rule prohibits a taxpayer from presenting for consideration evidence "to refute, discredit or disprove evidence . . . regarding the description, physical characteristics or condition of the subject property." In this proceeding, the appellant did not complete Section III of the Residential Appeal petition regarding the description of the subject property and the only "descriptive" data presented by the appellant was from the Multiple Listing Service sheet remarks regarding the property as of the time it was sold in January 2009. It is not clear on this record what the assessor would be seeking to have disregarded in terms of descriptive data of the subject dwelling.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)).

While the Board finds the evidence in the record supports a reduction in the subject's assessment, the reduction is not due to the January 2009 sale of the subject property. The appellant failed to provide sufficient details regarding the terms of the sale as required in Section IV of the appeal petition. More importantly, the sale in February 2009 is nearly two years prior to the assessment date at issue of January 1, 2011 and, in light of other record evidence, is found not to be indicative of the subject's estimated market value as of the assessment date.

The Board finds the best evidence of the subject's estimated fair market value in the record consists of comparable sales #3 and #4 presented by the board of review. These sales occurred in November 2010 and December 2009 with sale prices of \$190,000 and \$179,900 or \$157 and \$165 per square foot of living area, including land, rounded. These comparables were most similar to the subject dwelling in that they lacked basements like the subject. The properties were built in 1957 and 1959 whereas the subject was built in 1959 and these homes contain 1,212 and 1,092 square feet of living area, respectively, as compared to the subject which contains 1,404 square feet of living area.

## **2013 SYNOPSIS – RESIDENTIAL CHAPTER**

The subject's assessment reflects a market value of \$247,390 or \$176.20 per square foot of living area, including land, which is higher in terms of both overall value and on a per-square-foot basis than the two most similar sales in this record. Therefore, based on this record, the Board finds the subject property is overvalued and a reduction is warranted.

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<b>APPELLANT:</b>	<u>Robert Tucker</u>
<b>DOCKET NUMBER:</b>	<u>08-25703.001-R-1</u>
<b>DATE DECIDED:</b>	<u>September, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject has 6,600 square feet of land, which is improved with a 77 year old, two-story, masonry, single-family dwelling. The subject's improvement size is 2,207 square feet of living area, and its total assessment is \$84,371. This assessment yields a fair market value of \$878,865, or \$398.22 per square foot of living area (including land), after applying the 2008 Illinois Department of Revenue three year median level of assessment for Class 2 properties of 9.60%. The appellant, via counsel, argued that the fair market value of the subject property was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant submitted a residential appraisal report for the subject property with an effective date of January 1, 2008. The appraiser estimated a fair market value for the subject of \$670,000 based on the cost and sales comparison approaches to value. The appraiser also conducted an inspection of the subject. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review-Notes on Appeal," wherein the subject's total assessment of \$84,371 was disclosed. In support of the subject's assessment, the board of review submitted descriptive and assessment information for four properties suggested as comparable to the subject. The comparables are described as two-story, masonry, single-family dwellings. Additionally, the comparables range: in age from 66 to 77 years; in size from 2,460 to 2,860 square feet of living area; and in improvement assessments from \$19.92 to \$31.00 per square foot of living area. The comparables also have several amenities. Based on this evidence, the board of review requested confirmation of the subject's assessment.

In rebuttal, the appellant's attorney stated that the board of review's evidence was unresponsive to the appellant's market value argument.

After reviewing the record and considering the evidence, the Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(c). Having considered the evidence presented, the Board finds that the evidence indicates a reduction is warranted.

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In determining the fair market value of the subject property, the Board finds the best evidence to be the appellant's appraisal. The appellant's appraiser utilized the cost and sales comparison approaches to value in determining the subject's market value. The Board finds this appraisal persuasive because the appraiser has experience in appraising, personally inspected the subject property, reviewed the property's history, and used similar properties in the sales comparison approach while providing adjustments that were necessary. The Board gives little weight to the board of review's evidence as it did not address the appellant's market value argument.

Therefore, the Board finds the subject had a market value of \$670,000 for the 2008 assessment year. Since the market value of this parcel has been established, the 2008 Illinois Department of Revenue three year median level of assessment for Class 2 property of 9.60% will apply. 86 Ill. Admin. Code § 1910.50(c)(2)(A). In applying this level of assessment to the subject, the total assessed value is \$64,320, while the subject's current total assessed value is above this amount. Therefore, the Board finds that a reduction is warranted.

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<b>APPELLANT:</b>	<u>Tyler Bluff Townhome Association</u>
<b>DOCKET NUMBER:</b>	<u>11-02054.001-R-3 thru 11-02054.060-R-3</u>
<b>DATE DECIDED:</b>	<u>October, 2013</u>
<b>COUNTY:</b>	<u>Kane</u>
<b>RESULT:</b>	<u>Dismissed</u>

The subject properties consist of 60 residential dwellings otherwise known as the Tyler Bluff Townhome Development. The appellant, Tyler Bluff Townhome Association, filed its appeal based on overvaluation for each of the 60 parcels. The subject properties are located in Elgin Township, Elgin, Illinois.

The Board finds the appellant, Tyler Bluff Townhome Association, timely filed its appeal on April 5, 2012 following a "Notice of Findings" issued by the Kane County Board of Review on March 9, 2012. The Kane County Board of Review "Notice of Findings" depicts the appeal for each parcel was "Dismissed – Due to lack of jurisdiction." On June 11, 2013 the Kane County Board of Review filed its Motion to Dismiss the above captioned appeal for lack of standing. On or about August 19, 2013 the appellant filed its response to the Motion to Dismiss. On August 20, 2013, Intervenor, Elgin S.D. #U-46 filed its response in support of the Motion to Dismiss.

Kane County Board of Review argues that petitioner, Tyler Bluff Townhome Association, is not the taxpayer, owner and/or does not have standing conferred on it by operation of statute or case law. In support of its motion, the board of review argued that Section 16-30 of the Property Tax Code (35 ILCS 200/16-30) provides in pertinent part that an assessment may be revised only upon application by any "taxpayer." The board of review further cites Section 1910.10(c) of the rules of the Property Tax Board (86 Ill.Adm.Code §1910.10(c)) which states in pertinent part that appeals are permitted if filed by the "taxpayer" or "owner." The board of review further argued various descriptions of "taxpayer" are allowed, and not just those persons or entities holding legal title to the real estate, however, only taxpayers and those granted statutory standing may pursue an appeal (citing Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d 148 (3<sup>rd</sup> Dist. 2000), First National Bank v. Mid Central Food Sales, Inc., 129 Ill.App.3d 1002 (1<sup>st</sup> Dist. 1965)). Based on this argument, the Kane County Board of Review and Intervenor requested the appellant's appeal be dismissed for lack of standing to proceed before the Property Tax Appeal Board.

In its response to the motion to dismiss, the appellant argued the Property Tax Appeal Board has previously found that Homeowner's Associations have standing before the Board. Two Property Tax Appeal Board cases were submitted in support of this argument: River City Homeowners Association (Docket No. 03-30570) and New Gardens Association (Docket No. 06-28790). The River City case was decided on the merits and the New Gardens case was affirmed after the parties reached a settlement.

After reviewing the record, the Property Tax Appeal Board finds that it has does not have jurisdiction over the parties and the subject matter of this appeal.

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Section 1910.40(b) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code §1910.40(b)) states:

If the board of review objects to the Board's jurisdiction, it must submit a written request for dismissal of the petition prior to the submission of the Board of Review Notes on Appeal and accompanying documentation. The request for dismissal must set forth the basis of the board of review's objections to the Property Tax Appeal Board's jurisdiction over the appeal. In such cases, the Property Tax Appeal Board shall transmit a copy of the request for dismissal to the contesting party and secure a written response to the request for dismissal from the contesting party within 30 days after the postmark date of the notice of the filing of the motion to dismiss. A copy of the response shall be transmitted to the board of review. Upon receipt of the request for dismissal and the response, the Property Tax Appeal Board shall issue a decision determining if it has jurisdiction in the matter.

(86 Ill.Adm.Code 1910.40(b)).

The Board finds the Kane County Board of Review objected to the Property Tax Appeal having jurisdiction over the above captioned appeal pursuant to Section 1910.40(b) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code §1910.40(b)).

The Board finds Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) states in relevant part:

In counties with 3,000,000 or more inhabitants, beginning with assessments made for the 1996 assessment year for residential property of 6 units or less and beginning with assessments made for the 1997 assessment year for all other property, and for all property in any county other than a county with 3,000,000 or more inhabitants, **any taxpayer** dissatisfied with the decision of a board of review or board of appeals as such decision pertains **to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review** or board of appeals on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review or (ii) in assessment year 1999 and thereafter in counties with 3,000,000 or more inhabitants within 30 days after the date of the board of review notice or within 30 days after the date that the board of review transmits to the county assessor pursuant to Section 16-125 its final action on the township in which the property is located, whichever is later, **appeal the decision to the Property Tax Appeal Board for review**. . . .(Emphasis added)

(35 ILCS 200/16-160).

Section 1-150 of the Property Tax Code (35 ILCS 200/1-150) defines a taxing district as:

## 2013 SYNOPSIS – RESIDENTIAL CHAPTER

Any unit of local government, school district or community college district with the power to levy taxes.

(35 ILCS 200/1-150).

Section 1910.10(c) of the rules of the Property Tax Appeal Board (86 Ill.Ad.Code §1910.10(c)) states:

Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision **pertains to the assessment of his property** for taxation purposes, or a taxing body that has a tax revenue interest in the decision of the board of review on an assessment made by any local assessment officer, may file an appeal with the Board. (Emphasis added)

(86 Ill.Ad.Code §1910.10(c)).

Section 1910.60(a) of the rules of the Property Tax Appeal Board (86 Ill.Ad.Code §1910.60(a)) states in relevant part:

**Any taxpayer or owner of property** dissatisfied with a decision of the board of review as such decision pertains to the assessment **of his or her property may appeal** that decision by filing a petition with the Property Tax Appeal Board . . . (Emphasis added)

(86 Ill.Ad.Code §1910.60(a)).

The court in Kankakee County Board of Review v. Property Tax Appeal Board, 316 Ill.App.3d 148 (3<sup>rd</sup> District 2000) in determining whether a party that initiated an appeal before the Property Tax Appeal Board had standing as an owner or taxpayer, stated:

Title refers only to a legal relationship to the land, while ownership is comparable to control and denotes an interest in the real estate other than that of holding title thereto.

Kankakee at 152, citing (People v. Chicago Title & Trust Co., 75 Ill.2d 479 at 489 (1979)).

The Kankakee court further found:

Especially in tax law, "[t]he key elements of ownership are control and the right to enjoy the benefits of the property. Revenue collection is not concerned with the "refinements of title"; it is concerned with the realities of ownership."

Id. at 152

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The Board further finds Section 16-160 of the Property Tax Code (35 ILCS 200/16-160) and Section 1910.10(c) of the rules of the Property Tax Appeal Board are clear: only a "taxpayer", "owner" or "taxing district having an interest in the decision of the board of review" may file an appeal before the Property Tax Appeal Board. The Board finds the appellant is not refuting that it is neither a "taxpayer", "owner" nor "taxing district" as defined in the Code and/or the Property Tax Appeal Board rules. The Board further finds the appellant, Tyler Bluff Townhome Association, is not a "taxpayer", "owner" nor a "taxing district" as defined in the Code, nor is it granted leave to file an appeal before the Board pursuant to the rules of the Property Tax Appeal Board or any other statutory authority.

The appellant relies instead on previous decisions entered by the Property Tax Appeal Board; however, it fails to provide statutory authority and/or case law in support of the proposition that previous decisions of the Board have precedential weight in the Board's analysis. The Board finds that each appeal before the Property Tax Appeal Board stands on its own merits. The decisions of the Property Tax Appeal Board have no precedential value for future appeals; however, pursuant to Section 1910.90(i) of the rules of the Property Tax Appeal Board (86 Ill.Adm.Code §1910.90(i), the Board may take judicial notice of previous decisions issued by the Board.

Section 1910.90(i) of the rules of the Property tax Appeal Board states:

The Property Tax Appeal Board may take official notice of decisions it has rendered, matters within its specialized knowledge and expertise, and all matters of which the Circuit Courts of this State may take judicial notice.

86 Ill.Adm.Code §1910.90(i)

The Board takes judicial notice of the previous decisions cited herein (River City Homeowners Association (Docket No. 03-30570) and New Gardens Association (Docket No. 06-28790); however, the Board further finds these cases are discernible from the instant case in that in each previously cited appeal, the issue of jurisdiction was not raised.

As an aside, there was no ruling by the Kane County Board of Review with respect to the correctness of the assessments of the individual parcels. Thus, the Board finds the decisions of the board of review did not relate to the assessment so as to confer jurisdiction under Section 16-160 of the Property Tax Code.

Therefore, based on the conclusion that Tyler Bluff Townhome Association is not a taxpayer, owner or taxing body, the Board finds the appellant does not have standing to file an assessment appeal and the Board grants the motion, case dismissed for lack of jurisdiction.

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<b>APPELLANT:</b>	<u>Aaron &amp; Dianah Young</u>
<b>DOCKET NUMBER:</b>	<u>10-00217.001-R-1</u>
<b>DATE DECIDED:</b>	<u>November, 2013</u>
<b>COUNTY:</b>	<u>Whiteside</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with a two-story dwelling of frame construction containing 1,976 square feet of living area. The home was built in 1903. Features of the home include a partial unfinished basement, central air conditioning and a 320 square foot detached garage. The dwelling is situated on approximately 10,890 square feet of land area located in Mt. Pleasant Township, Whiteside County, Illinois.

The appellant, Aaron Young, appeared before the Property Tax Appeal Board claiming overvaluation as the basis of the appeal. In support of this argument, the appellants completed Section IV- Recent Sale Data of the Residential Appeal and submitted the Settlement Statement disclosing the subject was purchased on September 24, 2010 for a price of \$48,102. The subject was sold by U.S. Bank, the transfer was not between family or related corporations and was advertised by the realtor firm Ruhl & Ruhl through agent Jerry Lancaster.

The appellant argued that the subject was in a severely dilapidated condition when purchased in 2010, which could be seen in the photographs within the appraisal. The appellant also acknowledged that the roof was in such bad condition that the shingles were curling and disintegrating and pieces were falling into the gutters. The appellant testified that the porch had rotten wood which needed replaced and there was missing siding in the rear of the home.

The appellants also submitted an appraisal of the subject property prepared by Jean E. Ridley, a state certified appraiser. The appraiser was not present at the hearing. The intended use of the appraisal report was for a mortgage finance transaction. The appraisal report conveys an estimated market value for the subject property of \$51,000 as of September 17, 2010 using the sales comparison approach to value.

Based on this evidence, the appellants requested the subject's assessment be reduced to \$16,406 to reflect the recent sale price.

Under cross-examination, the appellant testified that the subject was advertised through the Multiple Listing Service (henceforth MLS) by Jerry Lancaster of Ruhl & Ruhl Properties in the Quad Cities and that he became aware of the property by viewing the sign in the yard. The appellant further testified that the subject was purchased from U.S. Bank, possibly through foreclosure, and that he did not know the amount that was remaining on the previous loan. The appellant also stated that he was not sure how long the subject was exposed to the real estate market.

At the hearing, the board of review's representative objected to consideration of the entire appraisal, except for the photographs to which the appellant could attest, since the appraiser was

## 2013 SYNOPSIS – RESIDENTIAL CHAPTER

not present to provide testimony and/or be cross-examined with regard to the report. The objection was taken under advisement by the Board's Administrative Law Judge.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$25,094 was disclosed. The subject's assessment reflects an estimated market value of \$74,529 or \$37.72 per square foot of living area including land using Whiteside County's 2010 three-year average median level of assessments of 33.67%.

In support of the subject's assessment the board of review submitted information provided by Whiteside County's Supervisor of Assessments, Robin Brands, comprised of a grid analysis detailing three comparable sales.

In rebuttal, Brands asserted the appellant purchased the subject from a bank as a foreclosure, after previously being purchased in July 1998 for \$81,000. In addition, Brands reported the township had 55 arms-length-sales, which support the subject's assessment. The board of review also argued the appellants' appraisal included two sales that were sheriff's sales or bank deeds as foreclosed property.

The board of review's comparables are improved with two-story dwellings of frame exterior construction located within 5 blocks of the subject. The dwellings range in size from 1,050 to 2,110 square feet of living area. The dwellings were constructed from 1905 to 1930. The comparables feature full basements, one of which is 50% finished, central air conditioning, one fireplace and garages ranging in size from 240 to 360 square feet of building area. The comparables sold from May to December 2010 for prices ranging from \$70,000 to \$110,000 or from \$42.07 to \$91.90 per square foot of living area, including land.

The board of review's representative called Whiteside County's Supervisor of Assessment, Robin Brands, as a witness. Brands testified that a "bank sale" would not be classified as a "good sale" by the assessor's office, because a "bank sale" would not be between a willing buyer and a willing seller. Brands testified that the subject's condition as of January 1, 2010 was good or average. Brands further testified that the subject sold on July 11, 2012 for \$94,500 and that a new roof and other repairs would not equate to a \$40,000 increase in the subject's market value.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

For this appeal, the appellants contend the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the subject's sale price supports a reduction in the subject's assessment.

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As an initial matter, the Property Tax Appeal Board hereby sustains the objection of the board of review's representative as to hearsay and admissibility. The Board finds that in the absence of the appraiser at hearing to address questions as to the selection of the comparables and/or the adjustments made to the comparables in order to arrive at the value conclusion set forth in the appraisal, the Board will give no weight to the appraisal and will strike the appraisal from the record. The Board finds the appraisal report is tantamount to hearsay. Illinois courts have held that where hearsay evidence appears in the record, a factual determination based on such evidence and unsupported by other sufficient evidence in the record must be reversed. LaGrange Bank #1713 v. DuPage County Board of Review, 79 Ill. App. 3d 474 (2<sup>nd</sup> Dist. 1979); Russell v. License Appeal Comm., 133 Ill. App. 2d 594 (1<sup>st</sup> Dist. 1971). In the absence of the appraiser being available and subject to cross-examination regarding methods used and conclusion(s) drawn, the Board finds that the weight and credibility of the evidence and the value conclusion of \$51,000 as of September 2010 is significantly diminished and will be stricken from the record.

The Illinois Supreme Court has defined fair cash value as what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d. 428, (1970). A contemporaneous sale of property between parties dealing at arm's-length is a relevant factor in determining the correctness of an assessment and may be practically conclusive on the issue of whether an assessment is reflective of market value. Rosewell v. 2626 Lakeview Limited Partnership, 120 Ill.App.3d 369 (1<sup>st</sup> Dist. 1983), People ex rel. Munson v. Morningside Heights, Inc, 45 Ill.2d 338 (1970), People ex rel. Korzen v. Belt Railway Co. of Chicago, 37 Ill.2d 158 (1967); and People ex rel. Rhodes v. Turk, 391 Ill. 424 (1945).

As to the subject's recent sale, the Board finds that the transfer meets the main elements of an arms-length transaction. The subject was advertised for sale by a realty firm and the buyer and seller were not related. The appellant testified that he did not know the length of the subject's exposure time on the real estate market; however, there is no evidence in the record that the subject was not exposed for a reasonable length of time. The record is void of any corroborating evidence and testimony that the seller, U.S. Bank, was compelled to sell the subject property at the price the buyers offered as argued by the board of review. The Board further finds that based on the appellant's testimony, the subject was in poor condition and in need of repairs. The subject's assessment reflects an estimated market value of \$74,529 or \$37.72 per square foot of living area including land, which is excessive in light of the subject's 2010 arm's-length sale price of \$48,102.

The Board gave less weight to the comparables submitted by the board of review. The Board finds the comparable sales presented by the board of review do not overcome the arm's-length sale price evidence presented by the appellants. The Board gave less weight to the subject's 2012 sale price. This sale occurred greater than 21 months after the appellants' purchased the property and subsequently made repairs. Therefore, the Board finds the appellants demonstrated by a preponderance of the evidence that the subject was overvalued and a reduction in the subject's assessment is justified.

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<b>DATE DECIDED:</b>	<u>September, 2013 (to be certified) &amp; November, 2013 (final)</u>
<b>COUNTY:</b>	<u>Clinton</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of 6.08 acres of land area located in Bartelso, Germantown Township, Clinton County.

The appellant submitted evidence before the Property Tax Appeal Board claiming the board of review incorrectly classified and assessed the subject parcel. As of January 1, 2009 the subject was classified as 1.75 acres of cropland assessed at \$73 and 4.33 acres non-farmland assessed at \$1,500. The appellant claimed that the parcel should be classified as a "qualified farm tract" under Illinois law and the northern portion of this parcel should be classified and assessed as "wasteland, not idle land."

In support of this contention, the appellant cited Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) and submitted an aerial photograph and photographs of the subject property. The appellant also submitted a letter with a detailed description of the land. The appellant stated that he purchased the property in 2001 and it had always been assessed as a qualified farm tract. In 2009, the assessment was changed by the assessor from farmland to residential land. Subsequently, the board of review revised the assessment for 2009. The assessment was changed to 1.75-acres as cropland and 4.33-acres as timberland, but assessed as idle land at \$1,500. The appellant stated the northern portion of the subject parcel is under appeal. The appellant argued the "idle land" portion should be classified as "wasteland," under Section 10-125 of the Property Tax Code (35 ILCS 200/10-125.) The appellant also stated with the exception of approximately one-third to one-half acre in the extreme northeast corner of the parcel, this portion of the parcel is unsuitable for agricultural production due to the presence of natural springs and its constant-wet state. The appellant argued this area forms a vegetative filter for drainage from contiguous farmland to the north and east (not owned by the Trust), to the Hanover Drainage Ditch that runs through the parcel. Based on this evidence, the appellant requested the northern portion of the parcel be reclassified to wasteland.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$1,573 was disclosed. In support of the subject's assessment the board of review submitted an aerial map, a property record card, soil calculation report, soil identification map and several pages of soil descriptions. The board of review also submitted a letter addressing the appeal. The board of review argued the Clinton County Soil Survey, which was certified to the county from the United States Department of Agriculture, identified the soils on the 6.08 acre tract as suitable for cropland. The board of review argued they allowed 1.75 acres to be classified as cropland for the orchard area, but felt the remaining 4.33 acres did not qualify for a farmland classification, but rather "idle land" due to a management decision. The definition of "idle land" in Publication 122 from the Illinois Department of Revenue is land that is not put into a qualified farm use as the result of a management decision, including neglect. Idle land differs from wasteland, which is defined as "that portion of a qualified farm tract which is not put

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into cropland, permanent pasture, or other farmland as the result of soil limitation and not as a result of management decision." Based on this evidence, the board of review requests that the assessment be confirmed.

In rebuttal, the appellant submitted a letter addressing the board of review's evidence and a copy of his 2009 and 2010 U.S. Individual Income Tax Return. Also submitted was a letter from the prior owner of the property stating he was not able to plant crops on the northern portion of the subject property based on the surface water from the natural spring.

After reviewing the record and considering the evidence submitted, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds 4.33 acres of land under contention is entitled to a farmland classification and assessment.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

any property used solely for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. (35 ILCS 200/1-60)

In order to qualify for an agriculture assessment, the parcel must be farmed at least two years preceding the date of assessment (35 ILCS 200/10-110). Based on the appellants' evidence, the property has been used for agriculture purposes for at least two years prior to January 1, 2009. The Board finds the board of review properly classified 1.75 acres as cropland pursuant to the Property Tax Code (35 ILCS 200/1-60 and 35 ILCS 200/10-125)

Section 10-115 of the Property Tax Code provides that the Illinois Department of Revenue shall issue guidelines and recommendations for the valuation of farmland to achieve equitable assessment within and between counties (35 ILCS 200/10-115). Section 10-125 of the Property Tax Code (35 ILCS 200/10-125) identifies four types of farmland: (a) Cropland; (b) Permanent pasture; (c) Other farmland; and (d) Wasteland. Publication 122, Instructions for Farmland Assessments, issued by the Illinois Department of Revenue provides further guidance in classifying and assessing farmland. Page 2 of Publication 122 has a category labeled Wasteland, which provides in pertinent part:

Wasteland is assessed according to its contributory value to the farm parcel. In many instances, wasteland contributes to productivity of other types of farmland. Some land may be more productive because wasteland provides a path for water to run off or a place for water to collect. (Publication 122, Page 2).

The Property Tax Appeal Board finds the board of review did not contradict the appellant's statements regarding the natural springs and wet nature of 4.33 acres of the site or dispute the photographs showing saturated wet ground as a result of drainage and natural springs. The

## 2013 SYNOPSIS – FARM CHAPTER

Board finds that the board of review did not contradict or refute the fact 4.33 acres are used for drainage of contiguous property used for agricultural purposes.

The Board finds the subject's land is entitled to a farmland classification and assessment for two reasons. First, 4.33 acres of the subject property contributes to the productivity of other types of contiguous farmland because it provides a path for water to run off or a place for water to collect. Second, since the 4.33 acres is contiguous to land previously classified as farmland on the subject property, this portion of the subject parcel is also entitled to a farmland classification and assessment as provided by Publication 122 issued by the Department of Revenue and Section 10-125(d) of the Property Tax Code (35 ILCS 200/10-125(d)).

In conclusion, the Property Tax Appeal Board finds the board of review's assessment of the subject property is incorrect and a reduction is warranted. The Board hereby orders the Clinton County Board of Review to compute a farmland assessment in accordance with this decision. The board of review is hereby ordered to submit the revised farmland assessment to the Property Tax Appeal Board within **21 days** from the date of this decision.

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<b>APPELLANT:</b>	<b>John W. Main</b>
<b>DOCKET NUMBER:</b>	<b>11-05261.001-F-1</b>
<b>DATE DECIDED:</b>	<b>September, 2013</b>
<b>COUNTY:</b>	<b>Knox</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject parcel is improved with a single-family dwelling and a garage along with a barn crib, a pole barn, a shed and a recently constructed pole building. The new pole building has a dirt floor, 16 foot eaves, two 30 foot by 16 foot doors, a walk-in door, no electric service and 5,400 square feet of building area. The property is located in Altona, Walnut Grove Township, Knox County.

Based on the property record card and submission of the Knox County Board of Review, the subject barn crib, shed and pole barn together have an estimated value of \$5,500 or a total assessment of \$1,830. The newly constructed pole 5,400 square foot pole building which was first assessed in 2010 has an assessment of \$20,150 or an estimated market value of approximately \$60,470 according to the assessing officials.

The appellant contests only the assessment of this newly constructed pole building as being excessive based on its actual recent construction costs. The appellant did not dispute any other aspects of the assessment of the subject property. The appellant seeks to reduce the total outbuilding (farm buildings) assessment from \$21,980 to \$18,000, thereby reducing the assessment of the pole building by \$3,980 in assessment.

In support of this overvaluation argument, the appellant completed Section VI – Recent Construction Information and provided a brief and Attachments B through I. The appellant contends the subject pole building was erected on November 7, 2009 for a price of \$48,500 which includes all costs including contractor fees, architectural or engineering fees, landscaping and/or building permits. The appellant reports that the building was fit for its intended use on December 21, 2009. Attachment B consists of a receipt dated December 18, 2009 from Morton Buildings, Inc. for a Country Craft Building "erected as per Construction Proposal dated 7/13/09" with a total price of \$48,500. This total price reflects an actual cost of \$8.98 per square foot for the pole building.

In the brief, the appellant described the building as a "cold storage, farm building; this is a low class, lighter than typically constructed equipment storage building." The building lacks windows and has a dirt floor. Various specifications of the building are set forth in Attachments F through I.

The appellant also submitted Attachments C and D consisting of pages from the May 2011, *Marshall & Swift/Boeckeh, LLC Valuation Service*, Section 17 (pages 3 and 26). Citing these exhibits, the appellant contends the subject is a "low class D pole utility" building which at "low cost" would be valued at \$5.43 per square foot. For Attachment E, the appellant notes the building was constructed in 2009, not 2010 as recorded by the assessing officials thereby reducing the 17 years of remaining physical life of the building.

## 2013 SYNOPSIS – FARM CHAPTER

Based on this evidence, the appellant requested a reduction in the subject's pole building assessment to \$16,170 which would reflect a market value of approximately \$48,510 for the pole building in accordance with the actual costs of construction.<sup>1</sup>

The board of review presented its "Board of Review Notes on Appeal" wherein the final assessment of the subject property including land of \$48,840 was stated.<sup>2</sup>

The board of review in a three-page letter outlined both a response to the appellant's data and the evidence in support of the subject pole building's assessment. The board of review contends that the appellant is relying upon pages from the May 2011 *Marshall & Swift Valuation Service* manual for Farm Utility Sheds & Buildings to arrive at the requested farm building assessment. However, the assessing officials use the 2010 Illinois Department of Revenue Cost Schedules which is based on the building square footage and the eave height. Citing Exhibit #1, a page from the cost manual, depicting a base cost of \$10.70 or \$10.05 per square foot for 16 foot eave height pole frame buildings of either 5,000 or 6,000 square feet, respectively, the board of review contends this is the uniform method of applying the cost approach to the valuation of all farm buildings by the assessing officials.

Exhibit #2 is a grid analysis of the subject pole barn and three comparable area pole barns reportedly depicting uniformity in assessment methodology. Also submitted were property record cards for the subject and the three comparables as Exhibits #3, #4, #5 and #6 along with "detailed costing pages from our computer aided mass appraisal system (CAMA) indicating that the cost schedules are the same as those from the Illinois Dept. of Revenue's cost manual."

Based on this evidence, the board of review requested confirmation of the subject's outbuilding (farm building) assessment.

In written rebuttal, the appellant contends that the valuation of the subject pole building was based by the assessing officials on a "perceived" value rather than "the actual bill of sale (dollar amount paid)." Thus, the appellant contends that the use of the actual invoice for the subject building is better value evidence than the cost estimates presented by the assessing officials. In addition, the appellant contends that the suggested comparable pole buildings are dissimilar from the subject; in the case of comparable #2, the building is a superior quality Morton Building as compared to the subject Country Craft. Furthermore, regardless of any alleged uniformity, the appellant contends the subject's actual cost of construction is better evidence of the cost of the subject building.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds the evidence in the record does support a reduction in the building assessment of the subject recently constructed pole building.

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<sup>1</sup> As set forth on the Farm Appeal petition, outbuilding (farm buildings) total assessment of \$21,980 reduced to \$18,000. Three of the farm buildings are assessed for \$1,830 leaving an assessment of \$16,170 for the subject pole building ( $\$16,170 \times 3 = \$48,510$  estimated market value).

<sup>2</sup> This appears to be an error as there is no dispute that the 2011 Notice of Final Decision was issued on February 7, 2012 and presented a total assessment of \$48,600.

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The appellant argued that the subject pole building was improperly valued based upon recent construction costs. In support of this contention, the appellant submitted Attachment B along with additional documentation detailing the specifications of the subject building with a reported total cost of \$48,500. The board of review contends that the assessing officials uniformly use the 2010 Illinois Department of Revenue Cost Schedules which is based on the building square footage and the eave height as depicted in Exhibit #1.

For purposes of this appeal, the appellant contended that the pole building was overvalued by the assessor's applied cost manual methodology. When market value is the basis of the appeal the value must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. (86 Ill.Admin.Code §1910.65(c)). The Board finds that the appellant has overcome this burden.

The appellant presented evidence that was not refuted or contradicted that the subject pole building cost \$48,500 to purchase and have constructed. With regard to the appellant's construction costs, there was an actual receipt (Attachment B) presented to substantiate the reported cost. As to the appellant's construction cost data, the board of review contends that for uniformity all farm buildings are valued by the assessing officials using the applicable Illinois Department of Revenue Cost Schedules and for the subject building, the cost schedule presented a value of \$60,470 (Exhibit #3).

The Property Tax Appeal Board finds that the value of the subject pole building would be the total of the money spent on purchase and construction as represented on this record by Attachment B presented by the appellant. The board of review, on the other hand, presented estimated values as derived from a cost manual. Considering the subject building was only one year old, the Board finds the cost approach as reflected by the best evidence of the purchase price of the pole building less depreciation to be an appropriate method of estimating value of the subject pole building for assessment purposes. Thus, the Board finds the building's actual cost new of \$48,500 is the best basis to determine the estimated market value of the subject building.

The Property Tax Appeal Board further finds the subject pole building's assessment reflects a market value of \$60,470 which is substantially greater than the subject's actual purchase price of \$48,500 as depicted in Attachment B presented by the appellant. Thus, after considering the best value evidence on this record, the Board finds the appellant has demonstrated that the subject pole building's assessment is excessive in relation to its actual value and a reduction in the subject pole building's assessment is warranted commensurate with the appellant's request.

## 2013 SYNOPSIS – FARM CHAPTER

<b>APPELLANT:</b>	<b>John &amp; Denise McGarel</b>
<b>DOCKET NUMBER:</b>	<b>09-04350.001-F-1</b>
<b>DATE DECIDED:</b>	<b>February, 2013</b>
<b>COUNTY:</b>	<b>Kane</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of a 9.98 acre tract of land that is improved with a single family residence built in 1993. The subject parcel is also improved with a 2,600 square foot horse barn that was constructed in 1999-2000 and fenced pasture land. The property is located in St. Charles, Campton Township, Kane County.

John J. McGarel appeared represented by counsel before the Property Tax Appeal Board contending that 8.38 acres of the subject parcel is entitled to a farmland classification and assessment. In support of this argument the appellants submitted a brief addressing the appeal, plat of survey and various exhibits. Also submitted were photographs of the subject property which included alpacas, fenced pasture ground and a barn.

The appellants' attorney argued that John and Denise McGarel purchased the property in December 2006 to continue with Legacy Criations Alpacas Inc. The total acres purchased were 9.98. The assessments of the homesite of 1.60 acres, along with the residence and barn are not disputed.<sup>1</sup> The 8.38 acres that are used to raise and breed alpacas is the primary dispute on appeal. It is the appellants contention that they were "up and running" as of January 1, 2007 for their business.

Under cross-examination, McGarel testified that the improvements he had to make for conversion from a horse farm to an alpaca farm were to install fencing, transform the barn from horse use to alpaca use, upgrade the pasture and make sure the property was safe from coyotes. He testified that he did not have to purchase new fencing, the fencing already existed. McGarel testified that it took about six months to improve/modify the property. McGarel also testified that during calendar year 2007, he would bring alpacas to the subject property to graze and would house them in the barn.

Based on this evidence, the appellants requested a farmland assessment for 8.38 acres of the subject parcel.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$260,095 was disclosed. The board of review submitted a letter addressing the appeal. In this letter, the board of review had two issues. Issue #1 was "whether the property has been used as a farm as defined by the Illinois Property Tax Code." Issue #2 was "whether farm use is legally permissible on the property in question." They also submitted letters from the Village of Campton Hills, a letter from Jim Resser, president of the Homeward Glen Homeowners Association and a memorandum from Mark Armstrong, CIAO, as Clerk of the Board of Review.

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<sup>1</sup> Although the residence and farm buildings should be properly segregated for assessment purposes.

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Chris Ranieri, Zoning Officer, Village of Campton Hills, Jim Resser, president of the Homeward Glen Homeowners Association and Mark Armstrong, CIAO, as Clerk of the Board of Review were not present to give testimony or answer questions pertaining to their correspondence submitted with the board of review's evidence.

The board of review's representative called as its only witness Alan Rottmann, Campton Township Assessor.

Rottmann testified that he was informed by the Village of Campton Hills that a farm use was prohibited for the subject property because it was in a planned unit development. Rottmann testified that he questioned being able to grant a farmland assessment to a property that would be farming illegally. Rottmann also testified that the village's contention was the property wasn't considered a farm even though there were horses on the property before the purchase by the appellants.

Based on this evidence and testimony, the board of review requested confirmation of the subject's non-farmland assessment.<sup>2</sup>

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence and testimony in the record supports a change in the classification of the subject property and a division in the improvement assessment for both a farm building and a residence.

Here, the primary issue is whether the subject parcel is used primarily for agricultural purposes for the assessment year 2009 as required by Section 1-60 of the Property Tax Code. In Senachwine Club v. Putnam County Board of Review, 362 Ill. App. 3d 566 (3<sup>rd</sup> Dist. 2005), the court stated that a parcel of land may be classified as farmland provided that those portions of the property so classified are used solely for agricultural purposes, even if the farm is part of a parcel that has other uses. *Citing* Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill. App. 3d 799 at 802 (3<sup>rd</sup> Dist. 1999). The Board finds that in order to receive a preferential farmland assessment, the property at issue must meet this statutory definition of a "farm" as defined in the Property Tax Code. The Property Tax Appeal Board finds portions of a parcel may be classified as farmland for tax purposes, provided those portions of property so classified are used solely for the growing and harvesting of crops and/or the raising of livestock. Based on the evidence presented and not refuted, the Property Tax Appeal Board finds all but the homesite of the subject parcel is entitled to a farmland classification and assessment with appropriate assessments separated for the outbuilding (barn) and dwelling.

Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) defines "farm" in part as:

any property **used solely** for the growing and harvesting of crops; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or

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<sup>2</sup> At the hearing, the Property Tax Appeal Board requested the Kane County Board of Review prepare the agricultural assessment for the subject property.

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combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. [Emphasis added.]

In order to qualify for an agriculture assessment, the parcel must be farmed at least two years preceding the date of assessment (35 ILCS 200/10-110). The Property Tax Appeal Board gave no weight to the letters submitted by the board of review from Jim Resser, president of the Homeward Glen Homeowners Association and Mark Armstrong, CIAO, as Clerk of the Board of Review. Resser and Armstrong were not present to provide testimony or answer questions pertaining to the presence of alpacas on the subject property for the years 2007 and 2008. Based on the appellants' evidence and un-refuted testimony, the property has been used for agriculture purposes for at least two years prior to January 1, 2009.

Based on this statutory definition of a farm, the Property Tax Appeal Board finds the evidence and un-refuted testimony clearly shows 8.38 acres of the subject parcel and barn have agricultural uses that qualify for a farmland classification and assessment as of the 2009 assessment year. The Board finds the photographic evidence and un-refuted credible testimony presented by the appellants show the appellants were engaged in farming activities for the 2007, 2008 and 2009 assessment years. The Board finds the appellants raise and breed alpacas, which qualifies this portion of the subject parcel for a farmland classification and assessment based on its use. In order to qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. (35 ILCS 200/10-110). The Board finds the 8.38 acres of subject parcel complies with section 10-110 of the Property Tax Code. (35 ILCS 200/10-110).

The Property Tax Appeal Board gave no weight to Rottmann's testimony asserting that the subject property is not entitled to a farmland assessment primarily due to a perceived violation of the Village zoning laws. The jurisdiction of the Property Tax Appeal Board is limited to determining the correct assessment of real property that is the subject matter of the appeal. (35 ILCS 200/16-180). The Property Tax Appeal Board has no authority to make a determination as to whether or not the use of real property is in violation of zoning ordinances. In this appeal the evidence clearly demonstrated the subject property was being used as a farm in accordance with the relevant provisions of the Property Tax Code regardless of whether or not this use violated provisions of the Village's zoning ordinance.

Based on this record, the Property Tax Appeal Board finds 8.38 acres of the subject property is entitled to a farmland classification and assessment and the barn is entitled to a farm building classification and assessment. Therefore, the Board finds the subject's assessment as established by the board of review is incorrect and a reduction is warranted.

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<b>APPELLANT:</b>	<b>Michael J. Miner, Trustee</b>
<b>DOCKET NUMBER:</b>	<b>10-03785.001-F-1</b>
<b>DATE DECIDED:</b>	<b>July, 2013</b>
<b>COUNTY:</b>	<b>Iroquois</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property is improved with a part one-story and part two-story single-family dwelling of frame construction containing 3,024 square feet of living area. The age of the dwelling is unclear, but recorded as constructed in 1860. Features of the home include a partial basement, central air conditioning and an attached 1.5-car garage of 400 square feet of building area. The property consists of approximately 10-acres of which 66,325 square feet of land area have been treated as the homesite with the remainder being farmland. In the appeal petition, the appellant also reported that there are outbuildings that are "not contributing to farm operation." The property is located in Watseka, Crescent Township, Iroquois County.

The appellant's appeal is based on overvaluation.<sup>1</sup> In support of this argument, the appellant submitted an appraisal estimating the subject residence and homesite had a market value of \$57,000 as of April 17, 2011. The appraisal was prepared by Troy R. Krumwiede, a State of Illinois Certified Real Estate Appraiser. In estimating the market value of the subject property, the appraiser developed the cost and sales comparison approaches to value. The dwelling was said to have an effective age of 50 years.

As to the subject property, in pertinent part, Krumwiede wrote that the outbuildings have little contributory value and are in poor to fair condition. Moreover, the appraiser opined that these additional structures "do not contribute significant value on the market due to their obsolescence." He further wrote, "[t]heir intended use is obsolete and they become a burden to prospective owners who are not agriculturally inclined yet seek rural living."

Using the Marshall & Swift 1007 form, the appraiser estimated the cost new of the dwelling and garage to be \$242,314. The appraiser reported the outbuildings, consisting of a barn, corn crib and a tool shed, were 100% depreciated.<sup>2</sup> The appraiser next reported a multiplier of 1.29 resulting in a total cost new of \$312,585. Next, the appraiser deducted physical depreciation and functional obsolescence of \$239,826 resulting in a depreciated improvement value of \$72,759. The appraiser then estimated the homesite value to be \$10,000. Adding the various components, the appraiser estimated the subject property had an estimated market value of \$82,759 under the cost approach to value.

Using the sales comparison approach, the appraiser provided information on three comparable sales located from 4.88 to 10.82-miles from the subject. The comparables have homesites

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<sup>1</sup> While the appellant marked "assessment equity" as the basis of the appeal, the only evidentiary submission by the appellant was a spiral bound copy of an appraisal report which included color photographs. There was no assessment data submitted by the appellant in support of a lack of assessment uniformity claim. The substance of the appeal is a market value argument regarding all but the farmland assessment.

<sup>2</sup> A building sketch in the appraisal report depicts the barn as containing 1,080 square feet, the corn crib as 1,792 square feet and the shed as 352 square feet.

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ranging in size from 1.45 to 3.6-acres of land area. The properties are improved with 1.5-story or 2-story dwellings that range in size from 1,500 to 2,368 square feet of living area. The dwellings range in age from 84 to 111 years old. Features of the comparables include a full or partial unfinished basement, central air conditioning and a one-car to a three-car garage. Two of the comparables have outbuildings, one of which was said to be equal to the subject and one of which was said to be "better" than the subject. The comparables sold from May to December 2010 for prices ranging from \$40,000 to \$79,900 or from \$16.89 to \$50.73 per square foot of living area, including land, after these properties were on the market for 25 to 104 days.

After making adjustments to the comparables for differences from the subject in homesite size, bathroom count, dwelling size, garage size and/or outbuildings, the appraiser estimated the comparables had adjusted prices ranging from \$45,250 to \$75,400 or from \$19.11 to \$47.87 per square foot of living area, including land. Based on this data the appraiser estimated the subject had an estimated value under the sales comparison approach of \$57,000 or \$18.85 per square foot of living area, including homesite land.

In reconciling the two approaches to value, the appraiser gave most weight to the sales comparison approach to value as a direct interpretation of buyer and seller negotiations and estimated the subject property had a market value of \$57,000 as of April 17, 2011.

Based on this evidence, the appellant requested removal of the farm building assessment and reductions in the subject's homesite and residence assessments to reflect the appraised value of \$57,000 for a total assessment for the homesite and residence of \$19,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's assessments were disclosed. The property had the following assessments: Farmland - \$820; Homesite - \$4,000; House - \$35,238; and Outbuildings - \$1,233. The subject's homesite and residence assessments totaling \$39,238 reflect a market value of \$116,433 or \$38.50 per square foot of living area, including homesite land area, when applying the 2010 three year average median level of assessment for Iroquois County of 33.70% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

The board of review submitted a letter prepared by Clerk Robert A. Yergler, who raised two issues. First, it was note that the appellant checked the Assessment Equity box "instead of the Recent Appraisal box." Next, he set the issue as:

. . . the appraisal was completed by a Certified Residential Appraiser who is also an Iroquois County Board member. This circumstance in the opinion of the Iroquois County Board of Review represents a conflict of interest.

No other substantive evidence was presented by the board of review and no support for the conflict of interest was specifically cited. In closing and with these two circumstances, the clerk of the board of review "respectfully recommends that the appeal be denied."

In written rebuttal, the appellant asserted the basis of the appeal was a scrivener's error and should not preclude a decision being rendered on the merits. As to the purported conflict of

## 2013 SYNOPSIS – FARM CHAPTER

interest, the appellant cited to the Appraiser's Certification contained within the report as pages 12 and 13.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject residence, homesite and outbuildings of the property are not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof as to the homesite and residence and therefore, a reduction in the subject's homesite and residence assessments are warranted.

As to the outbuildings, Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) states in relevant part:

Improvements, other than farm dwellings, shall be assessed as a part of the farm and in addition to the farm dwellings *when such buildings contribute in whole or in part to the operation of the farm.* [Emphasis added].

Furthermore, Section 10-140 of the Property Tax Code provides:

Other improvements. Improvements other than the dwelling, appurtenant structures and site, including, but not limited to, roadside stands and *buildings used for storing and protecting farm machinery and equipment*, for housing livestock or poultry, or for storing, feed, grain or any substance that contributes to or is a product of the farm, *shall have an equalized assessed value of 33 1/3% of their value, based upon the current use of those buildings and their contribution to the productivity of the farm.* [Emphasis added.] (35 ILCS 200/10-140)

Where farm structures do not contribute to the productivity of the farm, then the buildings would add nothing to the value of the farm. O'Connor v. A&P Enterprises, 81 Ill. 2d 260, 267-68 (1980); see also Peacock v. Illinois Property Tax Appeal Board, 399 Ill. App. 3d 1060, 1071-1073 (4<sup>th</sup> Dist. 2003). In O'Connor, the Illinois Supreme Court discussed Section 10-140 of the Property Tax Code concerning 'other improvements' as:

a recognition by the legislature that certain structures located on a farm may have become obsolete by changes in farming methods or practices, and either have a greatly diminished value, or possibly no value at all in connection with the farming operation when considered as a part of the farm as a whole. The corncrib, once an essential structure on every farm for the storage of ear corn, has become primarily a relic of the past, due to the almost universal practice of combining the corn and drying and storing it as shelled corn. Horse barns now

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stand idle due to the disappearance of the use of horses for the powering of farm machinery, and many dairy barns are no longer used because of the decrease in the number of small dairy herds. The legislature has provided that these buildings should be valued on the basis of their contribution to the farm operation. If they are used for either their intended purpose, or for a substitute purpose, the appropriate value can be placed on them. Section 1(25) of the Revenue Act of 1939 [since replaced by the Property Tax Code] provides that these buildings shall continue to be valued as a part of the farm. If they contribute nothing to the productivity of the farm then, of course, the buildings would add nothing to the value of the farm. Being valued as a part of the farm, the failure to place a value on these buildings is a method or procedure of valuation and not an exemption from taxation. Just as a well that is no longer usable or a shade tree that is dead does not enhance the value of the farm, a barn or a corncrib that is not usable adds nothing to the value of a farm.

O'Connor at 267-268. In this appeal, besides the appraiser's opinion that for the fair market value determination of the subject residence, homesite and outbuildings that the outbuilding structures provided "little contributory value" to the subject property, there is no substantive discussion in the appellant's submission as to how the structures are or are no longer used in the farming operation. Therefore, the appellant's evidence does not adequately address the issues as outlined above as to whether these structures contribute to the farming operation.

In addition, at page 36 of the guidelines issued by the Illinois Department of Revenue in Publication 122 entitled "Instructions for Farmland Assessments" it states in pertinent part:

The law requires farm buildings, which contribute in whole or in part to the operation of the farm, to be assessed as part of the farm. They are valued upon the current use of those buildings and their respective contribution to the productivity of the farm. *Farm buildings are assessed at 33 1/3 percent of their contributory value.*

. . . Some farm buildings, even though they are in good physical condition, may play a minor role in the operation of the farm and have little value. These same buildings on another farm may be vitally important to the farming operation. The value of the farm buildings in these two instances is different. [Emphasis added.] (Publication 122, Instructions for Farmland Assessments issued by the Illinois Department of Revenue).

In the absence of evidence from the appellant concerning the contribution or lack thereof of these outbuildings to the farming operation, the appellant has failed to establish the assertion that the value of the outbuildings is zero as set forth in the appeal.

As to the homesite and residence, the Board finds the best evidence of market value to be the appraisal of the subject property submitted by the appellant. The appellant's appraiser developed the cost and sales comparison approaches to value and gave most weight to the sales comparison approach. The sales utilized by the appraiser were similar to the subject in location, size, style, exterior construction, features, age and/or land area. These properties also sold proximate in

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time to the assessment date at issue. The appraised value is below the market value of the residence and homesite reflected by these assessments.

The board of review raised two issues in response to the appeal. The first issue regarding the basis of the appeal has been given no weight as the appellant's evidence of a spiral bound appraisal report clearly was the only substantive evidence presented by the appellant that thereby reflected the appeal was based on overvaluation. The second issue regarding a "perceived" conflict of interest of the appellant's appraiser who also is an Iroquois County Board member has no support in citation to case law or rules of appraisal practice, USPAP or other guidelines to be followed by licensed appraisers. The board of review did not allege that the appraiser was a member of the Iroquois County Board of Review which might pose a different issue. Therefore, in the absence of specific evidence that Troy R. Krumwiede was prohibited from preparing this report due to his position on the county board or that the appraiser needed to specifically disclose his position on the county board as part of his appraisal report, the Property Tax Appeal Board gives this second issue raised by the board of review no weight in determining the correct assessment of the subject property and/or in considering the credibility of the appraisal report.

Based on this record, the Board finds the subject dwelling and homesite had a market value of \$57,000 as of January 1, 2010. Moreover, the Board finds the only record evidence regarding the subject outbuildings is that they "have little contributory value." Since market value of the homesite and residence have been determined the 2010 three year average median level of assessment for Iroquois County of 33.70% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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<b>APPELLANT:</b>	<b>Warren &amp; Coleen Strieker</b>
<b>DOCKET NUMBER:</b>	<b>10-00032.001-F-1</b>
<b>DATE DECIDED:</b>	<b>April, 2013</b>
<b>COUNTY:</b>	<b>Clinton</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of a 30.90 acre tract of land improved with a 736 square foot frame structure with an attached 253 square foot porch. The structure was built in 2006.

The appellants contend that the frame structure and attached porch are a non permanent, non fixed structure and should not be classified and assessed as real estate. In a letter to the Appeal Board the appellants asked that the structure "fall into the mobile home type tax structure".

In support of this argument the appellants noted that the structure was a "workboat" that was neither attached to a footing or foundation. They noted that due to the structure being in a flood plain it was not on a foundation but set upon pontoons filled with foam and a 40 foot long beam sitting on top of the ground. The porch was sitting on stone pillars sitting on top of the ground with shims. The appellants stated in the letter there were no footings. Since the appellants considered the structure a house boat and not a permanent structure they also contested the assessment of a "homesite" and requested the subject's assessment be returned to a total farmland assessment without a value for a homesite. The appellants indicated that the workboat was used as a workshop in conjunction with the tree farm operation. The structure provided not only storage for tools and a water pump but also served as a shelter for farm workers while working the tree farm. The appellants also noted that the solar panels and generators attached to the workboat assisted with the farm work.

In support of these arguments, the appellants submitted several photographs showing the structure under construction. Also submitted was an Illinois Department of Natural Resources (DNR) application for boat registration submitted by the appellants. In a letter to the Appeal Board the appellants noted that DNR returned their application and registration fee noting that non-powered watercraft owned and operated on water completely impounded on land belonging to the owner of the watercraft was exempt from the requirement of registration and title.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$11,465 was disclosed. The board submitted an aerial photograph of the subject property showing a clubhouse homesite of .84 acres and the remaining acreage charged as other farmland and waste land.

The board of review submitted a series of photographs of the subject structure. The board indicated the photographs showed the structure resting wholly on the pontoons and beams that are resting on concrete runners. The pontoons have a welded piece of metal which is bolted to the concrete runner. Other photographs showed the structure was built using trusses and support posts. Several photographs were submitted showing sewer lines from the structure attached to an underground holding tank. Utility lines are shown running from the structure to a propane tank and generator.

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The board of review also submitted a memorandum from an Illinois Conservation Police officer indicating that in his opinion the subject was not a boat or houseboat. The officer stated that the structure could not float due to the enormous weight of the building and that there was no flotation apparatus under the attached front porch to facilitate it to float. The officer also offered his opinion that the attached porch, sewer and utility lines and the fact that the structure could not float indicated it could not be classified as a boat but was indeed a permanent structure.

As a result of its analysis, the board of review requested confirmation of the subject's assessment.

After considering the evidence and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The appellants argued the subject property was incorrectly classified and assessed as real property and indicated the structure should be taxed under a mobile home type tax structure. The Board finds the evidence in the record does not support this claim.

Illinois' system of taxing real property is founded on the Property Tax Code. 35 ILCS 200/1-1 et seq.) The Mobile Home Local Services Tax Act sets up the "privilege tax" for mobile homes as a replacement for real property taxes for mobile homes not considered real estate. To be eligible for taxation under the Mobile Home Local Services Tax Act a structure must meet the definition of a mobile home as outlined under the act. Section 1 of the Mobile Home Local Services Tax Act defines a mobile home as:

**[a] factory assembled structure designed for permanent habitation and so constructed as to permit it transport on wheels, temporarily or permanently attached to its frame, from place of its construction to the location, or subsequent locations, and placement on a temporary foundation, at which it is intended to be a permanent habitation, and situated so as to permit the occupancy thereof as a dwelling place for one or more persons, provided that any such structure resting in whole on a permanent foundation, with wheels, tongue and hitch removed at the time of registration provided for in section 4 of this act, shall not be construed as a 'mobile home' but shall be assessed and taxed as real property as defined by Section 1-130 of the property Tax Code. [Emphasis added.] (35 ILCS 515/1).**

Section 1-130 of the Property tax Code defines "real property" in pertinent part as:

The land itself, with all things contained therein, and also all buildings, structures and improvements, and other permanent fixtures thereon. . . all rights and privileges belonging or pertaining thereto, except where otherwise specified by this Code. Included therein is any vehicle or similar portable structure used or so constructed as to permit its use as a dwelling place, if the structure is resting in whole on a permanent foundation. . . . (35 ILCS 200/1-130).

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It is clear from a review of the Mobile Home Local Services Tax Act that the "privilege tax" applies to only manufactured or mobile homes used solely for residential purposes. The photographs submitted by appellants show that the subject structure was a site stick built structure and not a factory assembled structure transported to the site on wheels. It is also clear from the appellants' own description that the structure was built as workshop for use in tree farm operation and was not intended to be permanent habitation or dwelling as defined in the Mobile Home Local Services Tax Act.

Therefore, the Property Tax Appeal Board finds that the subject improvements do not meet the legal requirements or qualifications for consideration or treatment under the Mobile Home Local Services Tax Act and must be classified, assessed and taxed as real property under the Property Tax Code.

## 2013 SYNOPSIS – FARM CHAPTER

<b>APPELLANT:</b>	<b>James VanderLaan</b>
<b>DOCKET NUMBER:</b>	<b>09-00840.001-F-2 and 10-00690.001-F-2</b>
<b>DATE DECIDED:</b>	<b>December, 2013</b>
<b>COUNTY:</b>	<b>Will</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property consists of an 18 acre tract of land that is located in Frankfort Township, Will County, Illinois.

The appellant appeared before the Property Tax Appeal Board claiming the subject parcel is entitled to a farmland classification and assessment<sup>1</sup>.

During opening statements, counsel argued the appellant has used the subject property for a variety of agricultural uses over the years. Counsel argued the appellant submitted income tax returns reflecting farm income. Counsel also referenced Senachwine Club v. Property Tax Appeal Board, 362 Ill.App.3d 566, (3<sup>rd</sup> Dist. 2005) as an authority for the proposition that the subject parcel is entitled to a farmland classification and assessment.

Counsel called James VanderLaan as a witness. VanderLaan is the owner and taxpayer for the subject property. VanderLaan purchased the subject parcel in 1994. VanderLaan testified there was a house located on the northwest corner of the property but it was donated to the fire department and was burned in 1995. Prior to 2009, VanderLaan testified the parcel was being farmed. (Tr. p.21) He testified a "Mr. Kohl would farm it. It would be corn or beans. Every other year they would do something like that." VanderLaan testified David Kohl has farmed the property since he has owned it. In 2009, VanderLaan testified he could not remember what was farmed, but he thought he "farmed trees off the property." (Tr. p.22) VanderLaan testified black walnuts and oaks were located on the far south end of the property. In 2009, VanderLaan testified he moved some of the small trees to the north end of the property to save them.

Form 4835 of the appellant's 2009 federal income tax return was marked as Taxpayer's Exhibit 1. VanderLaan authenticated the document. In 2009, VanderLaan reported farm income in his federal income tax returns. Line 6 depicts other income, including federal and state gasoline or fuel tax credit or refund in the amount of \$4,250. Line 7, Gross farm rental income was \$4,250. Line 32 lists the net farm rental income of \$4,250. Statement 7 attached to form 4835 lists "Timber sales" in the amount of \$4,250.

In 2010, VanderLaan testified he used the subject property to plant pumpkins and trees. (Tr. p. 23) VanderLaan testified pumpkins were planted "all over the place" and oak trees were planted on the "eastern part of the property along the fence line." He testified none of the trees were harvested in 2010. VanderLaan testified he sold the pumpkins to "all my friends" for \$400, which was reported on his federal income tax returns. VanderLaan testified in 2011 and 2012, he hired another farmer to plant pumpkins (2011) and beans (2012).

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<sup>1</sup> The appellant also raised the issue of uniformity of assessments or unequal treatment in the assessment process. However, at the hearing, this aspect of the appeal was withdrawn without objection.

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Based on this testimony, the appellant requested farmland assessment for the subject parcel.

Under cross-examination by the board of review, the appellant testified he was not approached by county assessment officials requesting records for the sales of pumpkins. He testified Joe Kral (Frankfort Township Assessor) and Nancy Camera (Farm Specialist for Will County) visited the subject property the day after the local board of review hearing. He claimed they observed pumpkins. VanderLaan testified the pumpkins were planted on the northeast part of the subject property in May 2010. VanderLaan agreed pumpkins were not present in 2009.

VanderLaan testified trees were harvested in 2009, which were present when he purchased the property in 1994. For clarification, the appellant testified under direct examination that the subject parcel was farmed with beans and corn from 1994 to until 2009. In response, the appellant testified "Let me count back years now. Last year was beans (2012), pumpkins (2011), pumpkins (2010) and then yeah - - yeah". VanderLaan could not remember if in 2008 or what year Kohl last farmed the subject property. VanderLaan testified "I never had a contract with him. I always got paid \$500 every year I had it." With respect to tax year 2008, VanderLaan testified "I would say he (Kohl) did" (farm the subject property). For tax year 2007, VanderLaan could not remember if he saw Kohl farm the property. For tax year 2009, VanderLaan testified Kohl raised either beans or corn.

With respect to the federal income tax return regarding the sale of timber, VanderLaan produced a copy of a contract/invoice/receipt pertaining to the sale of walnut trees located on the subject parcel for \$3,500. The document was dated October 2, 2006. The admissibility of the document was debated at the hearing. Ultimately, the Board's Administrative Law Judge ordered the document to be made part of the record. (86 Ill.Admin.Code §1910.67(h)(D)).(Tr. p.61) The document was marked as Appellant Exhibit 2.

The Board's Administrative Law Judge (ALJ) questioned VanderLaan for clarification of his previous testimony. VanderLaan previously testified beans and corn were planted and harvested on the subject property until 2009 (1994 through 2008); trees were harvested in 2009; and pumpkins were planted and harvested in 2010. With respect to Exhibit 2 in relation to the 2009 tax year, VanderLaan testified "Well that's what I cut down, whatever year that is". The Board's ALJ questioned for clarification if it would be fair to say you (VanderLaan) did not harvest any timber in the years 2007, 2008, 2009 or 2010. VanderLaan responded by stating "If that what it says. I can't see - - if that's what you said, yes. I know I planted trees from - - on the property, relocated them - -." VanderLaan finally agreed he did not harvest trees in 2007, 2008, 2009 or 2010. (Tr. p. 32).

VanderLaan was next questioned if he submitted a management plan in accordance with the Forestry Management Development Act (525 15/1 et seq.) with a description of the land to be managed, description of the types of lumber to be grown and the harvest schedule. Appellant's counsel objected to the question, arguing "To whom did he submit that?" The Board hereby overrules the objection. The appellant testified that he does have an inventory of the trees on the property. Notwithstanding the trees on the property, VanderLaan argued it does not mean you cannot still plant corn and beans on the property at the same time. The appellant testified he did not apply pest control or perform brush control.

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Under cross-examination by Frankfort CCSD 157-C, VanderLaan testified he did not prepare or file a Forestry Management Practice Plan with any state, local or federal agency. VanderLaan did not prepare or submit drawings regarding the preparation of the site for forestry planting. VanderLaan did purchase and plant approximately 300 oak trees during 2009 or 2010. He tended to the trees himself, but did not hire a weed or a pest control service. VanderLaan did not employ or know of a Fire Management Practices Plan. Photographs of the subject were reviewed that were submitted by the appellant. The photographs depict a few small trees, weeds and snow on the ground and have a stamp date of February 5, 2010. VanderLaan could not remember when the photographs were taken.

VanderLaan testified he did not file any report to any local or federal government agency indicating that he was growing corn on the subject property. The appellant was shown a copy of the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record, which was submitted by the appellant. The report was prepared on February 16, 2010 and lists the appellant, James VanderLaan as the farm operator. The document shows that 12.5 acres of the subject parcel would be planted in corn in 2010 for farm number 8898 and tract number 9573, which is the subject property. In response to questions regarding this document, VanderLaan testified "To be honest with you, last year they said they were going to plant corn. They plant soybeans. I can't - - don't know what that is. I don't know. I can't answer that. (Tr. p.46) That's what it says. I didn't sign it. I don't know. I don't know where this came from." (Tr. p.47) VanderLaan agreed he filed no documents, such as photographs, records, affidavits with respect to how the property was farmed in 2007 or 2008.

Under redirect examination, VanderLaan testified Mr. Kohl farmed the property with corn or soybeans in 2007 and 2008. There was no written lease with Kohl.<sup>2</sup> Kohl stopped farming in 2008 and in 2009 VanderLaan planted trees. He did not sell any trees in 2009. In 2010 VanderLaan planted pumpkins. He sold the pumpkins for \$4 each, but did not place a sign in front of the property. He sold pumpkins by word of mouth. VanderLaan did not apply pest control because he wanted to grow "organic pumpkins". Although he submitted the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record to the Property Tax Appeal Board, at the hearing, VanderLaan testified "No, I never seen that". (Tr. p.60)

Under further questioning by the board of review, VanderLaan testified he planted trees in 2009, but did not harvest any tree, even though he claimed \$4,250 for income on his 2009 federal income tax returns for "timber sales".

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's final land assessments of \$240,000 for 2009 and \$234,360 for 2010 were disclosed.

In support of the subject's classification and assessment, the board of review called Nancy Camera as a witness. Camera is the Will County Farm Specialist. She has worked in the Supervisor of Assessment Office for 19 years. Camera testified in 2006 Bulletin 810 changed the procedure as to how farm properties were classified and assessed. She testified all properties in Will County were reviewed. Camera reviewed aerial photographs of the subject property. She personally inspected the subject property in 2010 with Joe Kral, the Frankfort Township

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<sup>2</sup> Kohl was not present at the hearing to provide testimony with respect to the use of the subject property.

## 2013 SYNOPSIS – FARM CHAPTER

Assessor. Camera testified during the inspection she viewed weeds on the subject property. She testified Mr. Kral, Mr. VanderLaan and herself searched for pumpkins. She testified they "waded" through the weeds, which were "over her head" in order to find a few pumpkins scattered throughout the front half-acre of the subject property. In her opinion, she did not believe the subject represented other farm properties she has inspected. Camera did not have a description of the land to be managed; she did not see a harvest schedule; she did not observe any brush control; and did not see any harvesting of timber.

Camera was next referred to board of review Exhibit 1, an aerial photograph of the subject property from 2009. In reviewing the aerial photograph, Camera opined no farming activities have taken place on the parcel. She explained "If you look at the subject photograph, first of all, to the west you see another field, and it is obviously a row crop of some kind out of harvest, corn or soybeans. This is a typical row crop aerial photograph. When I see photos like the subject property that are outside the norm, then the question comes up, what is it? Could be hay or non-row crop such as that, could it be a garden harvest, pumpkins, could it be something else? So that's the first differentiation I make. When there is a tree farm that has been planted it's very obvious with you can see the dots. Dot, dot, dot, dot, dot. Trees are shown in rows of sufficient quantity to be seen on an aerial. I see none of that here. I see no change in how the grass or the greenery or the - - how the actual dirt looks from where it might be cropped as to where it might be cut as opposed to where it was let go because it's too wet. There's nothing to indicate any work being done on that property." (Tr. P.82) Camera testified corn and beans are row crops that can be seen from aerial photographs.

Under cross-examination, Camera testified the aerial photograph was taken in the spring of 2009. She did not know from what altitude. In the spring of 2009, Camera agreed pumpkins could not be seen from an aerial photograph.<sup>3</sup> Camera testified 300 tree saplings should be able to be seen (from an aerial photograph). She testified she saw "a few" "hip high" saplings during the inspection of the property in 2010. Camera testified she did see aerial photographs of the subject parcel in years 2007 and 2008, but the images were not part of the evidence.<sup>4</sup> Camera testified that if a property was farmed in 2008 with row crops, the spring of 2009 aerial photograph should show some evidence of the rows still being there, until overgrowing in late spring to mid-summer. Camera agreed she never physically viewed the property until 2010 with Mr. VanderLaan. Camera next testified she saw evidence of non-use on the subject property. She agreed she saw objects growing from the ground, including pumpkins and saplings.

Under redirect examination, Camera testified that based on her experience and her inspection, for 2007 and 2008 there was no indication of row crops being grown on the subject property. She testified she did not observe a Forestry Management Plan in place during inspection in 2010; there was no attempt to "knock out" obnoxious weeds; no attempt to control brush; and it was difficult to access the saplings. Camera agreed it would be reasonable that the saplings could have been overtaken by the weeds.

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<sup>3</sup> The appellant testified pumpkins were grown in 2010.

<sup>4</sup> Subsequent to the hearing, the Board ordered and received aerial photographs of the subject parcel for tax years 2007 and 2008 pursuant to section 1910.67 of the rules of the Property Tax Appeal Board. (86 Ill.Admin.Code §1910.67(h)(D))

## 2013 SYNOPSIS – FARM CHAPTER

Under cross-examination by the Frankfort CCSD 157-C, Camera was shown four photographs taken at the subject property dated October 10, 2010. The top left photograph was described as wild grasses and weeds. The lower left and top right photographs show weeds. She agreed the photographs are representative of the entirety of the property she walked across. The lower right photograph shows two pumpkins, which she described as buried under weeds, which is not optimal growing conditions for pumpkins. Looking to the 2009 aerial photograph she described an access road and she did not know what the "oval" shape was used for.

The board of review next called Joe Kral, the Frankfort Township Assessor, as a witness. Kral testified that during the inspection in 2010 he saw a few pumpkins, but they were not planted in an orderly fashion. He testified it was extremely hard to maneuver due to ruts and weeds over his head. Kral testified the eastern portion of the tract was inspected, which is where the saplings were pointed out. He did believe the property had been farmed in 2010.

Under cross-examination, Kral stated he could see no difference between tree saplings or weeds, admitting he is not an expert. He did not know if there was such a thing as wild pumpkins.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds no reduction in the subject's assessment is warranted.

The appellant claims the subject parcel is entitled to a farmland assessment and classification for both assessment years 2009 and 2010. The Board finds the most credible evidence and testimony presented by the parties does not show the subject property qualifies for a farmland classification and assessment under Illinois law. Section 1-60 of the Property Tax Code defines "farm" in part as:

any property **used solely for the growing and harvesting of crops**; for the feeding, breeding and management of livestock; for dairying or for any other agricultural or horticultural use or combination thereof; including, but not limited to hay, grain, fruit, truck or vegetable crops, floriculture, mushroom growing, plant or tree nurseries, orchards, forestry, sod farming and greenhouses; the keeping, raising and feeding of livestock or poultry, including dairying, poultry, swine, sheep, beef cattle, ponies or horses, fur farming, bees, fish and wildlife farming. (35 ILCS 200/1-60)

Additionally, in order to qualify for an agricultural assessment, the land must be farmed at least two years preceding the date of assessment. (35 ILCS 200/10-110). A review of the controlling common law shows the definition of a "farm" requires the property classification be based on the use of the property. See Santa Fe Land Improvement Co. v. Illinois Property Tax Appeal Board, 113 Ill.App.3d at 872, (3<sup>rd</sup> Dist.1983). Kankakee County Board of Review v. Illinois Property Tax Appeal Board, 305 Ill.App.3d 799 (3<sup>rd</sup> Dist. 1999); and McLean County Board of Review v. Property Tax Appeal Board, 286 Ill.App.3d 1076, 1078 (4<sup>th</sup> Dist. 1997). Based on the statutory definition of a farm and controlling case law, the Property Tax Appeal Board finds the evidence and testimony shows the subject parcel does not qualify for a farmland classification and assessment.

## 2013 SYNOPSIS – FARM CHAPTER

Initially, the Board finds the subject parcel does not qualify for a farmland assessment for either the 2009 or 2010 tax years due to the fact the subject parcel was not used for any type of accepted agricultural use during the 2009 assessment year. The appellant, initially testified, that during 2009, he harvested timber. At another point on the hearing he testified the subject was used to grow corn or soybeans in 2009, but could not remember which. However, under questioning, VanderLaan acknowledged timber was not harvested for assessment years 2007, 2008, 2009 or 2010. VanderLaan acknowledged that the last time timber was harvested was in 2006, for which he produced contract/invoice/receipt pertaining to the sale of walnut trees located on the subject parcel for \$3,500. The document was dated October 2, 2006. This evidence further undermines the testimony of VanderLaan that he planted trees in 2009, but did not harvest any trees, although he claimed \$4,250 for income on his 2009 federal income tax returns for "timber sales".

The Board further finds the evidence in the record reveals the subject parcel has not been managed as a tree farm under Illinois law. The Board finds the sporadic planting of saplings and the irregular poor maintenance of some of the trees contained on the subject parcel, as depicted in the photographic evidence, does not constitute an ongoing active tree farm. The Property Tax Appeal Board finds the Illinois Forestry Development Act (525 15/1 et seq.) provides some key elements to be considered when determining whether a taxpayer has a systematic plan to develop forest to grow and harvest timber on a methodical and regular basis. Sections 525/2(a) and (i) of the Illinois Forestry Development Act provide in part:

"Acceptable forestry management practices" means preparation of a forestry management plan, site preparation, brush control, purchase of planting stock, planting, weed and pest control, fire control, fencing, fire management practices, timber stand improvement, timber harvest, and any other practices determined by the Department of Conservation to be essential to responsible timber management. (525 ILCS 15/2(a)).

"Timber Grower" means the owner, tenant, or operator of land in this State who has interest in, or is entitled to receive any part of the proceeds from, **the sale of timber grown** in this State and includes persons exercising authority to sell timber. (515 ILCS 15/2(i)).

Furthermore, Sections 525/5 of the Illinois Forestry Development Act provides in part:

The proposed forestry management plan shall include a description of the land to be managed under the plan, a description of the types of timber to be grown, a projected harvest schedule, a description of the forestry management practices to be applied to the land, an estimation of the costs of such practices, plans for afforestation, plans for regeneration harvest and reforestation . . . . (525 ILCS 525/5).

The Board finds the above referenced citations set out key elements that are to be considered to determine whether a taxpayer has a systematic plan in place to develop a forest to grow and harvest timber on a methodical and regular basis to be used in the production of a forest crop. The Board finds the appellant presented no evidence that he complied with these enumerated

## 2013 SYNOPSIS – FARM CHAPTER

requirements. The Board finds although the subject property contains some trees in various stages of maturity and some saplings, the appellant readily admitted no trees have been harvested from the subject parcel for lumber production. Parcels used primarily for any purpose other than as a "farm" as defined in Section 1-60 of the Property Tax Code (35 ILCS 200/1-60) are not entitled to an agricultural assessment. Senachwine Club v. Property Tax Appeal Board, 362 Ill.App.3d 566, 568 (3<sup>rd</sup> Dist. 2005).

The Board further finds the testimony of Camera and Kral was credible, unlike the testimony provided by VanderLaan, and placed more weight on the testimony of these witnesses. These witnesses, based on their inspections in 2010, explained that weeds were so tall that many of the trees and saplings were overgrown. Furthermore, these witnesses testified that saplings were planted in a haphazard fashion, managed poorly and were un-organized. Thus, the Board finds the appellant's argument that the subject property is a tree farm is neither credible nor persuasive.

The Property Tax Appeal Board further finds this record is void of any credible evidence or testimony that would demonstrate the subject property was farmed with corn or soybeans, typical row crops, for tax years 2007, 2008 or 2009. In reviewing the aerial photographs, as Ordered, the Board finds there is no indication row crops were planted nor harvested for the aforementioned assessment years. In contrast, aerial photographs show the property located directly west of the subject property was clearly row cropped, unlike the subject property. The Board further finds it problematic that the appellant submitted a copy of the U.S. Department of Agricultural Farm Services Agency Abbreviated 156 Farm Record. This report was prepared on February 16, 2010 and lists the appellant, James VanderLaan as the farm operator. The document purports that 12.5 acres of the subject parcel would be planted in corn in 2010 for farm number 8898 and tract number 9573, which is the subject. Although the appellant submitted this document, he testified "I didn't sign it. I don't know. I don't know where this came from." (Tr. P. 47). Based on this analysis, the Board finds the subject parcel does not meet the requirements to qualify for a farmland classification and assessment as provided in Section 10-110 of the Property Tax Code, which provides in pertinent part:

The equalized assessed value of a farm, as defined in Section 1-60 and if used as a farm for the 2 preceding years, except tracts subject to assessment under Section 10-145, shall be determined as described in Sections 10-115 through 10-140. (35 ILCS 200/10-110).

This section of the Property Tax Code requires that land must be used for agricultural purposes for at least two years preceding the date of assessment, which did not occur under the facts of this case.

The Board finds based on the testimony elicited at the hearing, VanderLaan did not provide credible or persuasive testimony that the subject property was being used as a farm as defined by the Property Tax Code for tax year 2009 and 2010. Under both direct and cross-examination, VanderLaan was evasive in answering questions. Furthermore, VanderLaan's answers under questioning were either incomplete or inconsistent throughout the hearing. Based on this record, it appears from the evidence and testimony, VanderLaan attempted to comply with Illinois farmland assessment laws retrospectively by manipulating records and with the sporadic planting

## **2013 SYNOPSIS – FARM CHAPTER**

of pumpkins and tree saplings in a haphazard manner, only after the subject parcel's classification and assessment was changed to non-farmland.

Based on this record, the Property Tax Appeal Board finds the subject property does not qualify for a farmland classification and assessment for tax years 2009 or 2010. The Board further finds the subject's assessment as established by the board of review is appropriate.

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**PROPERTY TAX APPEAL BOARD**  
**SYNOPSIS OF REPRESENTATIVE CASES**  
**2013 COMMERCIAL DECISIONS**



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<b>APPELLANT:</b>	<u>Albuquerque, L.C.</u>
<b>DOCKET NUMBER:</b>	<u>10-01375.001-C-1</u>
<b>DATE DECIDED:</b>	<u>August, 2013</u>
<b>COUNTY:</b>	<u>Rock Island</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property is improved with two wood frame and brick veneer multi-tenant office buildings. The structures were built in 1978 and contain a total of 13,242 square feet of building area. One building is two-stories with a one-story addition and contains approximately 9,642 square feet of gross building area.<sup>1</sup> The second building is a one-story structure and contains approximately 3,600 square feet of gross building area. In addition, there is a large double-sided outdoor advertising sign on the parcel which pays rent to the property owner. The property has a 72,135 square foot site which is further improved with 96 asphalt paved parking spaces. The property is located in Moline, South Moline Township, Rock Island County.

The appellant's appeal is based on overvaluation. In support of this argument, the appellant submitted an appraisal estimating the market value of the leased fee interest<sup>2</sup> in the subject property as \$630,000 as of August 16, 2010. The appraisal was prepared by Kevin M. Pollard, a State of Illinois Certified General Real Estate Appraiser. The purpose of the appraisal was for a financial institution which was evaluating the property as collateral for a proposed loan. In estimating the market value of the leased fee interest in the subject property, the appraiser developed the income and the sales comparison approaches to value.

The appraiser also developed a land value estimate for the subject property of \$550,000. To arrive at this conclusion, the appraiser analyzed four land sales located in either Moline or Bettendorf, Iowa. The comparables range in size from 32,528 to 97,662 square feet of land area and sold between August 2008 and July 2010 for prices ranging from \$225,000 to \$682,000 or from \$6.92 to \$10.16 per square foot of land area. Next the appraiser outlined adjustments for differences from the subject in location, topography/shape, size and/or access to arrive at adjusted sales prices ranging from \$7.61 to \$9.65 per square foot of land area. Based on this data, the appraiser estimated the subject parcel had an estimated value between \$7.61 and \$7.68 per square foot of land area resulting in a final land value conclusion of \$550,000, rounded.

Using the sales comparison approach, the appraiser provided information on four comparable sales located in either Moline or Bettendorf, Iowa. The comparables are described as office buildings of frame or frame and masonry construction that range in size from 4,320 to 10,400

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<sup>1</sup> The board of review included a copy of the subject's property record card depicting this first building as a one-story with a finished basement plus the addition of 660 square feet on a slab foundation. The schematic drawing reveals two buildings with a total of 8,760 square feet of above-grade building area with an additional 4,500 square feet of basement area. However, the building information on the property record card sets forth 5,160 square feet as the total building area. Given the inconsistencies of the property record card, the Property Tax Appeal Board finds the appellant's appraiser set forth the best descriptive data of the subject buildings and has primarily utilized that information for this decision.

<sup>2</sup> The report defined a Leased Fee Interest as "the ownership interest held by the lessor, which includes a right to the contract rent specified in the lease plus the reversionary right when the lease expires." [citation omitted] (Appraisal, p. 2).

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square feet of building area. They were constructed from 1978 to 1988 and were in either average or good condition at the time of sale. The comparables have sites ranging in size from 14,061 to 79,671 square feet of land area and have land-to-building ratios ranging from 3.25:1 to 8.93:1. These comparables sold from March 2008 to May 2010 for prices ranging from \$360,000 to \$825,000 or from \$58.58 to \$84.05 per square foot of living area, including land. After making adjustments to the comparables for differences from the subject in location, age/condition, building size, land-to-building ratio and other factors, the appraiser estimated the comparables had adjusted prices ranging from \$54.63 to \$58.33 per square foot of building area, including land. After giving reduced weight to the highest adjusted sale price, which was the oldest sale price, the appraiser opined a value of \$725,000 or \$54.75 per square foot of gross building area, including land. The income without any expenses to the owner of the outdoor advertising sign revenue of \$2,500 per year has been capitalized at 10% for a contributory value of \$25,000 for a total value of \$750,000.

In addition to the foregoing sales, the appraiser reported discussing the subject property with two local commercial brokers. Reportedly the brokers felt that marketing a multi-tenant office building "in this economy" would be difficult, and that maintaining the current occupancy would be crucial to its pricing. The brokers reportedly also opined that the income generated by the outdoor advertising sign was relatively safe due to its highly visible location and the average daily traffic counts on the nearby road.

The appraiser also described the subject as being well-located and having a relatively good history of occupancy. At the time of the report, the appraiser reported the buildings were 89% occupied.

Under the income approach and in valuing the leased fee interest of the subject property, the appraiser analyzed the leases of the five tenants in the subject, noting additionally that one of the suites was vacant. The five existing leases at the subject property are either \$9.00 or \$12.26 per square foot with the most recent lease, which began in November 2009, being at \$9.00 per square foot. The vacant space is also being offered at \$9.00 per square foot. The highest lease is on a month-to-month basis. Each is a gross lease with the owner paying the taxes, insurance and common area maintenance; tenants pay utilities and interior maintenance. The appraiser noted that three of the five leases in the subject property were negotiated within the past two years at the same rental rate and thus it is the appraiser's opinion "that they are representative of market rent."

Based on the rent roll, the subject indicates a total rental income of \$102,769 for the currently leased space and filling the vacant space would add another \$12,600 resulting in a potential gross income of \$115,369 at 100% occupancy. The appraiser also noted the ground lease for the outdoor advertising sign which generates \$2,500 annually.

Next, the appraiser reported that the subject is currently experiencing a vacancy rate of 11.09%, "which is typical of the office market." On a stabilized basis, the appraiser included an allowance of 10% for vacancy, excluding the outdoor advertising sign income, or \$11,537 resulting in effective gross income of \$106,332.

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The appraiser reported that the owner only provided expenses for calendar year 2009 totaling \$13,357 which the appraiser noted "appear to be reasonable." Management fees were not included in the data, but reportedly are typically from 3% to 5% of gross income. The appraiser thus deducted combined expenses of \$13,357, real estate taxes of \$24,014 and a management fee of \$3,190 along with \$2,648 for replacements for reserves which resulted in net income of \$63,123.

The appraiser then considered sale #1's capitalization rate of 10.90% and data from RealtyRates.com's 2<sup>nd</sup> Quarter Investor Survey with overall rates of 9.49% for Suburban Office Buildings in larger metropolitan areas. Based on available data, the appraiser applied an overall capitalization rate of 10%. This analysis resulted in an indicated value for the subject by the income approach of \$630,000, rounded.

In reconciling the two approaches to value, the appraiser gave most weight to the income approach as it was "felt to be most reflective of the value of the leased fee interest in the property." The appraiser further wrote that the sales comparison approach to value was much higher, "but is not reflective of the income being generated by the leases." Finally, Pollard noted that the land value estimate tends to indicate that the improvements may be nearing the end of their economic lives.<sup>3</sup>

Based on this evidence, the appellant requested a reduction in the subject's total assessment to \$210,000 which would reflect a market value of approximately \$630,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$274,248 was disclosed. The subject's assessment reflects a market value of \$818,651 or \$61.82 per square foot of building area, including land, when applying the 2010 three year average median level of assessment for Rock Island County of 33.50% as determined by the Illinois Department of Revenue. (86 Ill.Admin.Code §1910.50(c)(1)).

The board of review submitted a three-page letter with various comments and criticisms of the appellant's appraisal and a discussion of evidence gathered by the township assessor. The assessor's analysis depicts the subject as having 13,260 square feet of building area. Initially, the board of review noted that the appraisal was not prepared for ad valorem assessment purposes and was not providing a value as of January 1, 2010. The board of review further noted that the subject sold in May 2001 for \$940,000 as reported in the appraisal report.

The closest land sales in proximity in the appraisal were for \$6.95 per square foot of land area. The land sale comparables also differ greatly in size from the subject according to the board of review. As to the comparable sales, the board of review noted that the prices vary widely. While the appellant's appraiser relied primarily upon the income approach in arriving at a value conclusion, the board of review notes that case law supports relying most heavily upon the sales comparison approach in valuing property for assessment purposes. The board of review asserts that the lowest adjusted sale price determined by the appellant's appraiser was \$54.63 per square

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<sup>3</sup> In the highest and best use analysis on page 5 of his report, the appraiser found that no more profitable use of the property has been identified and the existing buildings are considered to be the most productive use of the site.

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foot which, when applied to the subject's size, reveals a value of approximately \$723,410 which is greater than the appraiser's value conclusion.

In support of the subject's assessment, the board of review submitted information gathered by the South Moline Township Assessor. In a spreadsheet, the assessor presented data on five comparable sales, where comparables #2 and #5 were the same properties presented by the appellant's appraiser as sales #1 and #4. The comparables are improved with frame, brick, concrete block or stucco constructed buildings that were built between 1978 and 1998. The buildings range in size from 3,600 to 21,780 square feet of building area. The comparables sold from March 2008 to September 2010 for prices ranging from \$360,000 to \$3,050,000 or from \$83.33 to \$238.89 per square foot of building area, including land. The board of review argued that its comparable #3 was most similar to the subject in building size, although the properties differ in age. Depending upon an age adjustment ranging from 5% to 20%, the board of review contends the subject is still not entitled to a reduction in its assessment on a market value argument.

The assessor also prepared a spreadsheet with five equity comparables. The Property Tax Appeal Board finds that submission of equity comparables in response to the appellant's market value argument is not responsive and the board of review's additional equity data will not be further addressed herein.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board further finds a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The appellant submitted an appraisal of the subject property wherein the market value of the leased fee interest in the subject property was determined. While Pollard developed both the income and sales comparison approaches to value, only the sales comparison approach was performed to arrive at a fee simple value for the subject property. Section 9-145 of the Property Tax Code provides in part that except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.

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2d 428 (1970). In this regard it is noted that the appellant's appraiser's value conclusion specifically was developed to arrive at a market value of the leased fee interest in the subject property. As such, the appraiser noted that the value conclusion in the sales comparison approach was "not reflective of the income being generated by the leases."

The Property Tax Appeal Board finds that it could only consider the appraiser's fee simple determination and cannot consider the leased fee determination made by Pollard in his appraisal report. Moreover, the courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill. App. 3d 207 (2<sup>nd</sup> Dist. 1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill. App. 3d 9 (5<sup>th</sup> Dist. 1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. The Board also finds there are credible market sales contained in this record. Thus, the Board placed most weight on this evidence.

In light of the foregoing, the Board finds the best evidence of market value to be the sales comparison approach in the appraisal of the subject property submitted by the appellant. The sales utilized by the appraiser were similar to the subject in location, size, style, exterior construction, features, age and/or land area. These properties also sold proximate in time to the assessment date at issue. The value conclusion of \$750,000 or \$56.64 per square foot of building area, including land, is below the market value reflected by the assessment. Less weight was given to three of the comparable sales presented by the board of review due to differences from the subject in size and/or age. The most similar sales to the subject were board of review comparables #2 and #3. These unadjusted sale prices were \$84.88 and \$87.88 per square foot of building area. Each of these structures was newer than the subject by 9 and 14 years, respectively. Moreover, Pollard analyzed board of review sale #2 in the sales comparison approach and arrived at an adjusted sale price of \$55.53 per square foot of building area, including land, for this property.

Based on this record the Board finds the subject property had a market value of \$750,000 as of January 1, 2010. Since market value has been determined the 2010 three year average median level of assessment for Rock Island County of 33.50% shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

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<b>APPELLANT:</b>	<b>Comm. Consol. School Dist. No. 93</b>
<b>DOCKET NUMBER:</b>	<b>06-01837.001-C-3</b>
<b>DATE DECIDED:</b>	<b>June, 2013</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>Increase</b>

The subject property consists of 224,489 square feet of land area improved with a one-story masonry and concrete panel industrial building containing 98,961 square feet of building area. The subject was built in 2001 and features a reinforced poured concrete foundation with 3,889 square feet of office area (approximately 3.9% of total building area) and approximately 95,072 square feet of warehouse and storage area operated as a distribution warehouse. In addition, the subject has a ceiling height of 28 feet and 10 exterior docks with two drive-in doors. The subject is located at 205 – 235 E. Lies Road in Carol Stream, Bloomingdale Township, DuPage County.

Community Consolidated School District No. 93, acting as appellant, appeared through counsel before the Property Tax Appeal Board arguing the fair market value of the subject was not accurately reflected in its assessed value. In support of this argument, the appellant submitted an appraisal prepared by Certified Real Estate Appraiser Dale J. Kleszynski of Associated Property Counselors, Ltd. estimating the subject property had a market value of \$7,725,000 as of January 1, 2006 (Appellant's Exhibit "010").

As its witness, the appellant called Dale J. Kleszynski, with over 33 years of appraisal experience. Kleszynski is a licensed Illinois appraiser with MAI (Member of Appraisal Institute) and SRA (Senior Residential Appraiser) designations from the Appraisal Institute. Kleszynski noted that he has appraised from 30 to 100 warehouse facilities. Without objection, Kleszynski was accepted as an expert witness in this matter.

Kleszynski testified that he made an exterior inspection of the subject property in December 2007 and January 8, 2008. Kleszynski did not personally make an interior inspection of the subject property. In preparing his report, Kleszynski relied upon the descriptive information found in the appraisal report prepared by CB Richard Ellis and upon public records. Kleszynski testified the site consisted of 5.15-acres and contained 400.32 feet of road frontage. The subject was improved with a 98,961 square foot building containing approximately 3.9% of office space. Kleszynski reported the subject's condition as being good. Kleszynski testified that the property rights subject to the 2006 appraisal were to estimate the value of the fee simple interest of the subject. Kleszynski further testified that the highest and best use for the subject site as vacant was for development in accordance with the current zoning ordinance and area development patterns as industrial and distribution in character. Kleszynski opined that the highest and best use of the subject as improved was as each improvement existed. Kleszynski estimated the market value of the subject using the three traditional approaches to value.

Under the cost approach, the appraiser estimated the subject's value as \$8,000,000, rounded. To develop the land value, seven vacant land sales located in Carol Stream, Hanover Park and Bloomingdale were considered. These properties ranged in size from 87,120 to 455,638 square feet of land area and sold from July 2003 to March 2007 for prices ranging from \$609,840 to

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\$3,527,000 or from \$4.47 to \$8.50 per square foot of land area. Kleszynski testified that he did not adjust the land sales for size because it was not warranted. Kleszynski testified that upon his review of the land data and after comparison, the data did not show a clear-cut indication that size of the site would allow an extraction of an adjustment. For example, Kleszynski stated that comparable land sales #2 and #3, the smallest and largest land sales, sold in February 2005 for \$7.00 and \$7.74, respectively, per square foot of land area, even though the latter contains 368,518 additional square feet of land area. As further evidence of his contention that the data did not allow for an adjustment, Kleszynski testified that land sale #1 sold in 2006 for \$4.62 per square foot of land area while comparable #3 sold in 2005 for \$7.74 per square foot of land area, even though there was only 100,000± square foot difference in their size. He did, however, adjust the comparable land sales for date of sale since his records indicated land prices increased in the subject's market area from 2003 to 2006 and decreased in value from 2006 to 2007. Kleszynski estimated the subject's site value of \$6.00 per square foot of land area or \$1,350,000, rounded (page 27, Appellant Exhibit "010").

Next, the appraiser determined a replacement cost new for the subject improvement of \$7,156,859 or \$72.32 per square foot of building area utilizing the Marshall & Swift Cost Service and data taken from internal files for similar type properties that he evaluated in the past (page 28, Appellant Exhibit "010"). Kleszynski testified that he estimated a base cost of \$42 per square foot and then applied various adjustment multipliers for story height, number of stories, perimeter costs, current costs, local costs and entrepreneurial profit. Kleszynski stated that his entrepreneurial profit of 15% was estimated based on his contact with developers and can range anywhere from 10% to 30%. Depreciation was estimated to be 10% based on an age/life method. Kleszynski did not find any functional obsolescence during his exterior inspections. He found the subject was well designed for distribution with adequate docks and good ingress and egress. Kleszynski opined that based on the market and data in the subject's area there were no outside forces impacting the subject property, and therefore, he found no economic obsolescence. Physical depreciation was based on the building being well maintained and based on five years using a 50-year life. After subtracting 10% depreciation or \$715,685 from the replacement cost new of \$7,156,859, adding the depreciated values for the site value of \$200,000 and the estimated land value of \$1,350,000, the appraiser arrived at an estimated value for the subject of \$8,000,000, rounded using the cost approach.

In developing the income approach to value, Kleszynski first searched for rental comparables. Kleszynski selected four rentals located in Carol Stream. The comparables were described as single or multi-tenant industrial properties that ranged in size from 94,158 to 305,094 square feet with 60,000 to 128,000 feet of leased or available space. The properties had clear ceiling heights ranging from 18' to 30'; loading docks ranging from 2 to 17, parking units ranging from 114 to 290 automobiles. Rental rates ranged from \$3.98 to \$6.25 per square foot on a net basis. Based on an analysis of this data, Kleszynski estimated the subject's market rent of \$6.00 per square foot of building area or projected potential gross income of \$593,766.

Kleszynski assumed a vacancy and credit loss of 5% (\$29,688) given the subject's market area for an effective gross income of \$564,078. Next the appraiser calculated a management fee of 2.5% along with reserves for replacement of \$14,800 and miscellaneous fees of 1% for total expenses of \$34,541. After making these deductions, Kleszynski estimated the subject had a net income of \$529,537 (Page 33, Appellant Exhibit "010").

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The appraiser then estimated the capitalization rate for the subject from published indices, current financing terms and market data. The appraisal report depicts overall capitalization rates for industrial investment properties ranged from 6.8% to 8.0%. Based on the age, nature of improvements and location, Kleszynski estimated a capitalization rate of 7.25% was appropriate. Capitalizing the subject's net income resulted in an estimate of value under the income approach of \$7,300,000, rounded.

Next, Kleszynski developed the sales comparison approach to value. In doing so, he selected six comparable sales located in Glendale Heights or Carol Stream, Illinois. In his testimony, Kleszynski noted that the primary selection for sales was industrial properties in Carol Stream and Glendale Heights that were located within approximately a one mile radius of the subject or within a one-half mile radius of the intersection of Kimberly and Fullerton Avenue. The sales comparables were within 1.8 miles of the subject. Kleszynski testified that all of the sales are in adjacent suburbs to the subject, in the same industrial district, serviced by similar roadway access and expressway access as the subject. The selected comparables ranged in size from 25,414 to 101,158 square feet of building area and were built from 1985 to 2000. The comparables featured land-to-building ratios ranging from 1.40:1 to 3.89:1, clear ceiling heights ranging from 14' to 28' and 3 to 12 loading docks. Four of the comparables had 1 to 3 drive-in doors and five were reported to have from 60 to 124 parking spaces.<sup>1</sup> The properties sold from December 2004 to October 2006 for prices ranging from \$2,230,000 to \$8,847,000 or from \$77.62 to \$91.58 per square foot of building area, including land (Page 43, Appellant Exhibit "010"). After making adjustments to the comparables for date of sale, land-to-building ratio and size, the appraiser was of the opinion the subject had an indicated value under the sales comparison approach of \$78.00 per square foot of building area, including land, or \$7,725,000, rounded.

In reconciling the three approaches to value, Kleszynski gave most weight to the sales comparison approach to arrive at an estimate of value of \$7,725,000 as of January 1, 2006. Kleszynski testified that for the other approaches to value, he did not have information associated with the actual operation of the property, and because of that, it did not allow him to make some comparisons that he would normally have made. Kleszynski stated that the sales comparison approach was the strongest because the location of the data was within a very short distance of the subject property and the physical characteristics of that data, which, in his opinion created a reasonably tight range from approximately \$77 to \$90 per square foot of building area.

On cross-examination, Kleszynski acknowledged that he did not have support within the appraisal report for his statement that "properties similar to the subject are often leased at rates that range from \$4.75 to over \$6.50 per square foot on a net basis." (Page 33, Appellant Exhibit "010"). Kleszynski further acknowledged that in the sales comparison approach, his comparable #6 was a sale-leaseback. Kleszynski testified that he was aware of the leaseback during the preparation of his report, however, he did not feel it had any impact on his adjustment process for this comparable. Kleszynski further acknowledged that comparable #6 was subject to a Section 1031 tax exchange, however, again he felt this did not impact his adjustments to

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<sup>1</sup> The witness corrected the building size for comparable #6 to 55,000± square feet of building area with 337,000 square feet of land area and a land-to-building ratio to 5.42:1. The sales price then indicated a price of \$90.32 per square foot of building area, including land.

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comparable #6. Kleszynski acknowledged that comparables #1 and #5 and comparables #3 and #4 were purchased by the same purchaser on the same day. Kleszynski testified that a purchaser buying multiple properties did not affect his opinion of value. After reviewing the sales further, Kleszynski acknowledged that even though the aforementioned properties were purchased by the same buyer on the same day, they had different sellers in each transaction. Upon further questioning, Kleszynski could not recall if the subject was a single tenant building or a multi-tenant building. He agreed that a multi-tenant building would have a greater expense associated with it.

The board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of the subject property totaling \$1,913,250 was disclosed. Based on the subject's assessment and utilizing the 2006 three-year average median level of assessments for DuPage County of 33.21% as determined by the Illinois Department of Revenue, the subject property has an estimated fair market value of \$5,761,066.

In support of the subject's assessment, the board of review adopted the appellant's retrospective appraisal evidence previously submitted and deferred presentation.

The taxpayer/intervenor, Chicago Industrial Investments, LLC, through counsel, called as its first witness, P. Linas Norusis, who is employed by CB Richard Ellis. He is the senior managing director in their valuation and advisory services group. Norusis has been with CB Richard Ellis since 2004, managing director since 2006 and senior managing director since 2008. Norusis has been a real estate appraiser since 1985 and is currently certified in six states; Illinois, Indiana, Wisconsin, Michigan, Kentucky and Missouri. Norusis holds the MAI designation from the Appraisal Institute. He has prepared over 1,000 industrial appraisals, with well over 100 in the DuPage area.<sup>2</sup> Chad Bosley, a senior real estate analyst, assisted him in preparation of an appraisal report of the subject property. Bosley physically inspected the subject and did a preliminary search of all market data, and co-wrote the report. Norusis prepared one report for two different properties (205–235 East Lies Road and 245-265 East Lies Road). The same market data was used for each property. Norusis testified that his firm used the three traditional approaches to value in estimating a value for the subject with primary emphasis being placed on the income capitalization approach because he believed the subject was most likely to be purchased by investors who are more concerned with the income producing capability of property as opposed to the physical characteristics. Norusis testified that the highest and best use of the subject as improved was for continued industrial use.

Under the cost approach to value, Norusis analyzed four vacant land sales. The sales were located in Carol Stream, Hanover Park and Bloomingdale, Illinois. They ranged in size from 2 to 10.46 acres. The sales occurred from April 2004 to February 2005 and sold for prices ranging from \$610,000 to \$3,527,000 or from \$196,085 to \$370,332 per acre or from \$4.50 to \$8.50 per square foot of land area. Adjustments were made for size, corner access, frontage which indicated an adjusted range from \$4.50 to \$8.08 per square foot of land area. Based on these vacant land sales, Norusis estimated the subject's land value at \$4.50 per square foot of land area or \$1,010,000. (Page 43, Taxpayer/Intervenor Exhibit "A").

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<sup>2</sup> Norusis was recognized as an expert without objection.

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For the improvement, Norusis used the Marshall Valuation Service to estimate the replacement cost new of the subject (Page 46, Taxpayer/Intervenor Exhibit "A"). The subject was described as a one-story, 5 year old industrial building, in good condition with pre-cast concrete exterior walls, a 28' ceiling height and as having a gross building area of 98,961 square feet. A base square foot cost of \$27.29 was applied with additional factors and refinements added for sprinklers, floor area and cost multipliers to arrive at a final square foot cost of \$45.90 or \$4,542,196. Site improvements and indirect building costs of 5% were added to the base building cost which indicated \$4,992,000, rounded, for direct and indirect building costs. Entrepreneurial profit of 5% (\$249,600) was added to arrive at a replacement cost new for the subject improvements of \$5,241,600. Norusis estimated 11.1% depreciation which was deducted from the replacement cost new to arrive at a depreciated replacement cost of \$4,659,200. The estimated land value of \$1,010,000 was added which indicated an estimated value for the subject utilizing the cost approach to value of \$5,669,200 or \$5,700,000, rounded or \$57.60 per square foot of building area, including land (Taxpayer/Intervenor Exhibit "A").

Utilizing the sales comparison approach, Norusis examined five comparable sales. The sale properties, built from 1993 to 2004, were located in Bolingbrook, Joliet, Hanover Park, Carol Stream and Aurora, Illinois. They had office space ranging from 3% to 10% of total building area; ceiling heights ranging from 27' to 40' and land-to-building ratios from ranging from 1.08:1 to 3.27:1. The comparables ranged in size from 91,200 to 694,367 square feet of building area and sold from January to December 2005 for prices ranging from \$5,850,000 to \$38,250,000 or from \$46.45 to \$64.14 per square foot of building area, including land. The comparables were adjusted for age/condition, land-to-building ratios, clear ceiling heights, percentage of office space and economics. After making adjustments, the sales indicated a value ranging from \$48.77 to \$55.73 per square foot of building area, including land. Norusis testified that based on the sales comparison approach, the subject was estimated to have a market value of \$5,300,000, rounded, or \$53.53 per square foot of building area, including land.

Norusis further testified that he performed a backup analysis utilizing a net income multiplier analysis. Norusis estimated the net operating income for the subject of \$4.07 per square foot of building area. The five sales indicated they had net operating incomes ranging from \$3.85 to \$4.69 per square foot of building area. He then used the price per square foot of each sale and divided it by the net operating income per square foot of each sale to arrive at a net income multiplier for each comparable sale. Norusis then applied the net income multiplier to the estimated net income for the subject property which indicated a price per square foot. This was used as a secondary check on the direct adjustments that were previously estimated. This method provided a range of value from \$49.28 to \$58.84 per square foot of building area for the subject property based on a net income multiplier analysis. Norusis testified that the value range based on the net operating income multiplier analysis was consistent with the direct sales comparison approach analysis.

Norusis next developed the income capitalization approach to value. Norusis gave this approach to value the most weight relative to the three approaches to value. Norusis utilized four comparable properties located in close proximity to the subject. Norusis was able to obtain specific lease information for each comparable. The four rental comparables were built from 1993 to 2005, had occupancy rates of either 100% or 55%, ranged in size from 70,400 to 305,094 square feet of building area, had office space ranging from 3.8% to 19.7% of total

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building area, clear ceiling heights ranging from 24 to 30 feet, leases ranging from 3 to 10 years with rental rates ranging from \$3.98 to \$6.15 per square foot of leased area on a triple-net basis.

In addition, Norusis utilized 12 additional actual lease transactions located in the greater north DuPage County industrial submarket as a secondary check as to the market rental rates for the subject. Based on the comparable rental properties, Norusis estimated a market rent for the subject of \$5 per square foot of building area. Potential gross income of the subject was estimated to be \$494,805 from which 11.06% or \$57,397 for vacancy and credit losses were deducted to arrive at a net rental income for the subject of \$437,408 or \$4.42 per square foot of building area. Effective gross income was estimated to be \$591,257. Operating expenses of \$188,882, including property taxes, were deducted which indicated a net operating income of \$402,375 or \$4.07 per square foot of building area. The comparable sales indicated an overall capitalization rate ranging from 6.91% to 8.25%, and industry publication Korpacz Real Estate Investor Survey for the first quarter of 2006, which indicated a range of overall capitalization rates ranging from 5.5% to 9%. After interviewing market participants, which indicated overall capitalization rates ranging from 7% to 7.75%, Norusis opined an overall capitalization rate of 7.5% was appropriate. Applying this rate to the subject's net operating income yielded an estimated value for the subject utilizing the income approach of \$5,400,000, rounded, or \$54.57 per square foot of building area, including land.

After reconciling the three approaches to value, and giving most weight to the income capitalization approach, Norusis estimated the subject's value to be \$5,400,000 as of January 1, 2006.

During cross-examination, Norusis was questioned on his lack of a time adjustment for his land sales when the data indicated there was an increase in industrial property sales. Norusis acknowledged that he did not make any adjustments to his land sale #3 even though it was irregular in shape, had approximately 1,750 less road frontage than the subject and sold approximately 14 months prior to the valuation date during a time in which record high prices were recorded. Norusis testified that he felt comparable land sale #3 was most representative to the subject property. Norusis further acknowledged that he did not check the "green sheet"<sup>3</sup> for improved sale #1 during his analysis and that improved sale #1 may have not been placed on the open market prior to its sale.

In regards to his sales comparison approach, Norusis admitted that the PTAX-203 forms for his improved comparable sales #2 and #3 indicated they were not advertised for sale and were not sold using a real estate agent.

During questioning regarding his income approach to value, Norusis could not refute that the rental properties he used in his analysis had an occupancy rate of 1.4% and yet he concluded the subject should have 11.6% vacancy in preparing his analysis. Norusis also admitted that using a vacancy rate of 11.6% for the subject's submarket vacancy rate was incorrect. Norusis further admitted that his expense comparables lacked addresses from which his data could be verified, and therefore, his estimate of operating expenses of \$1.91 per square foot of building area also could not be verified. Norusis testified that his conclusion of the real estate tax expense and

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<sup>3</sup> Otherwise known as the PTAX-203 or PTAX-203A form.

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management fees expense, on a per-square-foot basis, were higher than any of the comparables he used. Norusis admitted that his appraisal report provided no analysis as to how he came up with a 7.5% overall capitalization rate, other than it fell between the range of 5.5% and 9%.

During re-direct, Norusis appeared to have trouble testifying as to who the actual client was. Norusis testified that the client for the appraisal report was Chicago Industrial Investments, LLC. Norusis testified earlier that Tim Harbeck, a senior real estate manager of CB Richard Ellis, Inc. acted as the property manager for the subject properties and hired valuation and advisory services group of CB Richard Ellis, Inc., to prepare an appraisal report. Norusis testified that he did not view any of the comparables used in his appraisal report and only drove by the subject property. He did not go inside the subject property as he did not think it was necessary. Norusis testified that he relied on Chad Bosley for whether the information was true and correct.

Norusis further testified that no size adjustments were warranted for properties containing at least five acres of land area. Norusis opined that five acres or so was adequate and was considered similar in that a purchaser would look at a five acre parcel and a ten acre parcel in the same way; it all depended on how big of a building a purchaser could put on the property. Norusis testified that the most important factor they considered in his sales comparison approach to value was time of sale. Norusis testified that of the 12 lease transactions on page 59 of his appraisal report, the lease rentals could be verified because the tenant name is listed. Norusis clarified that the 11.6% vacancy rate he used was appropriate when considering all of the rental comparables, instead of 5%, which represented the physical vacancy within the four rental comparables on page 29 of his appraisal.<sup>4</sup> Norusis further testified that CB Richard Ellis is the largest commercial real estate firm in the world with over 25,000 employees. They have several different groups within CB Richard Ellis that provide services for management, leasing, mortgage financing, valuation and advisory services. Norusis stated that the valuation and advisory services group is essentially a silo within CB Richard Ellis that provides unbiased, third party estimates of market value regardless of who the client is. Norusis admitted that the person who hired him to do the appraisal also works for CB Richard Ellis.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that an increase in the subject's assessment is warranted.

The appellant, Community Consolidated School District No. 93, contends the assessment of the subject property is incorrect and not reflective of its market value. The law in Illinois requires real property to be valued at fair cash value, estimated at the price it would bring at a voluntary sale. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480, 894 N.E.2d 400, 323 Ill.Dec. 633 (1<sup>st</sup> Dist. 2008). Correspondingly, fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). Fair cash value is synonymous with fair market value. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480 (1<sup>st</sup> Dist. 2008). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring

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<sup>4</sup> Under the heading "Vacancy" for "Rent Comparables" Norusis testified that it should read 5% and not 11.4%. (page 29, Taxpayer/Intervenor Exhibit "A").

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at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in this record supports an increase in the subject's assessment.

The "Board of Review Notes on Appeal" depicts the final assessment of the subject property totaling \$1,913,250 indicating the subject property has an estimated fair market value of \$5,761,066. The board of review adopted the appellant's retrospective appraisal evidence and deferred presentation of its evidence in support of the subject's assessment. The appellant, Community Consolidated School District No. 93, submitted an appraisal, prepared by Dale J. Kleszynski, MAI, SRA, of Associated Property Counselors Ltd., estimating the subject property had a market value of \$7,725,000 as of January 1, 2006. The taxpayer/intervenor, Chicago Industrial Investments, LLC., submitted an appraisal, prepared by P. Linas Norusis, MAI and Chad Bosley, SRA, of CB Richard Ellis, Inc., estimating the subject property had a market value of \$5,400,000 as of January 1, 2006.

The Board finds the manifest weight of the evidence presented in this appeal supports an increase in the subject's assessment. The Board further finds the best evidence in this record of the subject's fair market value as of January 1, 2006, is the retrospective appraisal presented by the appellant.

The Board finds the appraiser, Dale J. Kleszynski, offered credible evidence and testimony in support of the subject's estimated market value of \$7,725,000. Kleszynski gave primary reliance to the sales comparison approach to value in estimating the subject's fair market value. Norusis, the taxpayer/intervenor's appraiser, on the other hand, placed primary reliance on the income approach to value in estimating the subject's fair market value. The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. Since there are credible market sales of distribution warehouses, such as the subject, contained in this record, the Board placed most weight on this evidence as presented by both parties.

The record depicts Kleszynski indicated the property rights being appraised were the fee simple interest while Norusis testified that he was hired to provide an estimate of the market value of the subject.<sup>5</sup> The Board finds Chicago Industrial Investments, LLC is the owner of the subject; CB Richard Ellis acting as property manager of the subject property hired Norusis, also of CB Richard Ellis, to estimate the subject's market value. The Board finds that even though Norusis

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<sup>5</sup> Page iv of the CB Richard Ellis appraisal depicts the property rights appraised is the fee simple estate. (page iv, taxpayer/intervenor's Exhibit "A").

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testified that he has no present or prospective interest or bias with respect to the subject property, a possible bias could exist which may call into question and reflect on the credibility of the final value conclusion contained in the CB Richard Ellis appraisal. The Board finds that both appraisers agreed that the highest and best use of the subject property as improved was for its current or existing use.

Both appraisers described the subject as a being improved with a one-story industrial warehouse/distribution center constructed in approximately 2001. The subject was described as having 98,961 square feet of building area situated on 5.15 acres or 224,489 square feet of land area. Kleszynski estimated a marketing time for the subject property was 12 to 18 months while Norusis estimated a marketing time of 6 months. The Board gave more weight to the marketing time as presented by Kleszynski based on his experience of appraising distribution/warehouse facilities in the subject's immediate market area. The Board finds Norusis testified regarding his position as senior managing director of the CB Richard Ellis valuation and advisory services group, however, the testimony revealed Chad Bosley, who was not called as a witness, gathered all of the data and personally inspected the subject property in preparation of the appraisal report. During re-direct examination, Norusis did not offer credible testimony regarding which client the appraisal was prepared for, CB Richard Ellis as property manager or Chicago Industrial Investments, LLC. Norusis testified that he took the data as gathered by Bosley as being true and correct. A majority of the verification of the data used was performed by Bosley. The Board finds Norusis appeared to have acted in a supervisory role in preparation of the appraisal. Therefore, the Board finds Norusis' testimony lacked credibility, was perhaps biased and did not adequately support the estimate of value found in the CB Richard Ellis appraisal. The Board further finds Kleszynski's appraisal to be better supported and more credible.

Both appraisers utilized the cost approach to value. Norusis examined four vacant land sales while Kleszynski utilized the same vacant land sales as Norusis and added three additional land sales. The differences between the two appraisers were in the adjustments made to the comparables to estimate a land value for the subject. Norusis adjusted his land sales for size while Kleszynski did not make this adjustment. Based on the inconsistency of the data, Kleszynski opined that a size adjustment could not be clearly extracted for analysis purposes. Kleszynski testified, and the data revealed, that after a review of data, a clear extraction of an adjustment for size was not available. As an example, Kleszynski testified that the smallest property and largest property, which both sold in 2005, only had a \$0.74 difference in the square footage price, even though there was over a 368,000 square foot difference in size between the two parcels. In addition, Kleszynski also pointed out two parcels with only a 100,000 square foot difference in size had a difference in price of \$3.62 per square foot. Norusis testified that all of his adjustments for land size were downward<sup>6</sup>, even though comparable land sale #1 was twice as large as the subject and comparable land sale #2 was half the size of the subject. The evidence and testimony further revealed Kleszynski made an adjustment for date of sale while Norusis did not. Kleszynski testified that he adjusted upward for date of sale for comparables #2 through #6 which occurred prior to 2006 and downward for #1 and #7, which were post-dated from January 1, 2006. Kleszynski testified that the market appeared to be trending upward between 2003 and 2006. During cross-examination, Norusis admitted that on page 16 of his appraisal report he indicates that in 2005 a new record was set for industrial property sales which

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<sup>6</sup> Transcript page 223.

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included a 52.65% increase in sales of industrial properties from 2004. In addition, the report depicts that the average price per square foot of industrial property increased from \$56 to \$63 per square foot between 2004 and 2005, almost a 12% increase. In addition, Norusis agreed that for the past two years (2004 and 2005), the marketplace had been expanding at an annual rate of over 50% with record high prices and low capitalization rates reported. Further, Norusis agreed that the Chicago market's industrial sales increased by 37% between 2004 and 2005 with the price per square foot for industrial property in the Chicago market increasing 9% between 2004 and 2005. Norusis admitted, however, that despite this data, he did not apply a date of sale adjustment to his land sale comparables.

Norusis further acknowledged that he considered land sale #3 as being most representative of the subject, even though it was irregular in shape when compared to the subject and contained only 40 to 60 feet of road frontage, while the subject is generally rectangular in shape and contains approximately 400 feet of road frontage. Counsel for the appellant pointed out that Norusis' land sale #3 had a unit cost (\$4.50 per square foot of land area) significantly lower than any of the other three land sales he used. Despite these differences, Norusis estimated the subject's land value at \$4.50 per square foot of land area, the absolute lowest of any land comparable. Kleszynski estimated the subject's land value to be \$6.00 per square foot of land area. Both parties presented land sales ranging from \$4.47 to \$8.50 per square foot of land area. Based on the testimony of the appraisers and the data presented, the Board gave more weight to Kleszynski's estimate of land value, \$6.00 per square foot of land area or \$1,350,000, rounded.

Both appraisers used the Marshall Valuation Service cost data to estimate the subject's replacement cost new. Kleszynski utilized a base cost of \$42.00 per square foot of building area while Norusis used \$27.29 per square foot of building area. Kleszynski testified that upon his review of the CB Richard Ellis appraisal, it appeared to him that using the Marshall Valuation Service with a base cost range from \$20 to \$30 per square foot, the buildings were described as being pole buildings and frame constructed buildings. Kleszynski testified that the subject is a tilt-up paneled warehouse distribution center that appeared to have steel beams and columns. In addition, Kleszynski pointed out that Norusis' appraisal depicted the subject had a flat roof and steel metal decks and bar joists. Kleszynski testified that the cost approach in the CB Richard Ellis appraisal appeared fundamentally incorrect in terms of the description of the building and using \$25 as a base cost,<sup>7</sup> which was more reflective of a pole building. Kleszynski further testified that he verified this concern with actual contractor statements for buildings he had been involved with in industrial locations. Norusis did not attempt to clarify this discrepancy during his testimony, and no other evidence was provided to disprove Kleszynski's claim that an incorrect base cost was used for the subject in the CB Richard Ellis appraisal. Kleszynski's appraisal depicts that based on interviews with developers active in the construction of building improvements throughout Northern Illinois he utilized an entrepreneurial profit factor of \$1.15 per square foot of building area, or \$113,805 ( $\$1.15 \times 98,961$ ). Kleszynski testified that entrepreneurial profits ranged from 10% to 30% and opined that 15% was appropriate in this instance, based on his contacts with developers. For his estimate of entrepreneurial profit, Norusis utilized a figure of 5% of direct building cost or \$237,735 ( $\$4,754,696 \times 5\%$ ). Kleszynski estimated the subject's building improvements replacement cost new of \$7,156,859

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<sup>7</sup> A base cost of \$27.39 per square foot was actually used.

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and Norusis estimated the subject's replacement cost new for the subject improvements of \$5,241,600.

The Board finds both appraisers were generally in agreement on the amount of depreciation; 10% versus 11.1%. The Board further finds the divergence between the two appraisers occurs depending on the correct base cost, land value, the addition of depreciated value of the site improvements and entrepreneurial profit.<sup>8</sup> The Board is unable to find support based on the testimony in this record or in the CB Richard Ellis appraisal that a 5% entrepreneurial profit of 5% of total building cost is appropriate. Utilizing the cost approach to value, and after subtracting depreciation and adding the depreciated value of the improvements, Kleszynski estimated the subject value to be \$8,000,000, rounded, and Norusis estimated the subject's value to be \$5,700,000. The Board finds Kleszynski's estimate of the base cost, entrepreneurial profit and his included land value estimate is better supported, therefore, Kleszynski's estimate of value using the cost approach to value was given more weight in the Board's analysis.

During cross-examination, Norusis was unable to recall why an insurable value schedule was included in the CB Richard Ellis appraisal, other than to testify that periodically people ask for an insurable value just as a check against their existing insurance policies to make sure they have adequate coverage. (See page 51 of the taxpayer/intervenor Exhibit "A").

Both appraisers also developed an estimate of value using the income capitalization approach to value. Norusis placed primary emphasis on the income capitalization approach. Norusis testified that he and Bosley identified four comparable industrial properties located in the immediate area of the subject. Norusis testified that they had specific lease information for the four properties. They also utilized 12 additional lease transactions located in the greater north DuPage County industrial submarket as a secondary check of the market rental rates. After analyzing the properties, Norusis arrived at an estimate of market rent for the subject of \$5 per square foot of building area. This estimated market rent was then applied to the subject to arrive at potential rental income. Vacancy and collection losses were deducted to arrive at effective gross income. After applying various expenses typical of the subject, Norusis testified that the net operating income was capitalized to arrive at an estimate of market value for the subject using the income approach to value. Norusis further testified that the market rental data was compared to the subject specific data as well. At the time of the appraisal, the subject property had leases in place that ranged from \$4.87 to \$5.28 per square foot, which Norusis found was consistent with the estimated market rents.

During cross-examination, Norusis acknowledged that he concluded a vacancy rate of 11.6% for the subject was proper even though all five sales used in the sales comparison approach were 100% occupied and with 11 of the 12 rental comparables being 100% occupied. Further, appellant's counsel pointed out that Norusis' rental comparables had tax liabilities ranging from \$0.93 to \$1.10, and yet when applied to the subject, a figure of \$1.19 for real estate taxes was used. In addition, management fees for the comparables ranged from \$0.08 to \$0.11 while a management fee of \$0.12 was applied to the subject, higher than all of the rental comparables. Norusis agreed that none of the rental comparables had a replacement reserve expense; yet \$0.15

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<sup>8</sup> Kleszynski added \$200,000 for depreciated site improvements while Norusis testified that miscellaneous site improvements of \$25,000 were added.

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was applied to the subject during the income analysis. Appellant's counsel argued that this represented instances where the market data gathered was ignored when applied to the subject. Norusis estimated the subject's net operating income to be \$402,375 or \$4.07 per square foot of building area. Kleszynski examined four rental comparables located in Carol Stream, Illinois. Kleszynski's comparables rented for prices ranging from \$3.98 to \$6.25 on a net basis. Using a marketing time of 6 and 12 months for a 10 year lease term and a vacancy rate of 5%, management expenses of 2.5% of effective gross income with miscellaneous expenses estimated at 1% of effective gross income and \$0.15 per square foot of building area for reserves for replacements, Kleszynski estimated the subject's net income to be \$529,537 or \$5.35 per square foot of building area. Norusis utilized an overall capitalization rate of 7.50% and Kleszynski utilized an overall capitalization rate of 7.25%. Each appraiser estimated their respective overall capitalization rates after examination of various published indices and market data. The Board finds the final estimated capitalization rate as used by each appraiser was not well supported in either appraisal. Rather, the Board finds each appraiser estimated an overall capitalization rate within a specified range with little or no explanation as to how the final estimated overall capitalization rate was decided upon. Kleszynski estimated the subject's value based on an income approach to value of \$7,300,000. Norusis estimated the subject's value under the income capitalization rate method to be \$5,400,000. The Board finds Norusis failed to support and/or offer substantive testimony to refute the allegations, or explain why he and/or Chad Bosley utilized figures outside of the established range as depicted by the market data. Based on the data in this record and the credibility of the testimony herein, the Board finds Kleszynski's estimate of value for the subject using the income approach to value is better supported by the manifest weight of the evidence in this record.

Both appraisers developed the sales comparison approach to value with Kleszynski giving primary weight to this method in estimating the market value of the subject property. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach.

In developing the sales comparison approach Norusis used five suggested comparable sales, while Kleszynski utilized six suggested comparable sales. Norusis concluded an estimated market value of \$5,300,000 or \$53.56 per square foot of building area, including land. As explained in the CB Richard Ellis appraisal, page 55 (taxpayer/intervenor Exhibit "A") Norusis did not adjust each improved sale to the subject property in order to account for specific physical and locational characteristics, rather, he extracted a unit of comparison that he felt was significant, from the improved sales after analyzing each comparable property. Kleszynski concluded an estimated market value of \$7,725,000 or \$78.00 per square foot of building area, including land.

The Board gave less weight to the opinion of value concluded by Norusis. During cross-examination, Norusis agreed that he may have not used several sales located within the north DuPage industrial submarket. Norusis was unable to testify whether there were industrial

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distribution warehouses in the same neighborhood as the subject which sold around the date of valuation. He relied on the data provided by Chad Bosley. Norusis agreed that sale #1, a multi-tenant building with over seven times the building area square footage than the subject and with approximately ten times the land area of the subject, was also located approximately 22 miles south of the subject in Bolingbrook, Illinois. The marketing time for sale #1 was marked as "not available." Norusis admitted that he had not checked the PTAX-203 and 203A forms which may have indicated the marketing time. Norusis could not recall if improved sale #1 was on the market prior to its sale. Upon questioning from appellant's counsel, Norusis agreed that one criterion for market value is that a reasonable time is allowed for exposure in the open market. Norusis agreed that if sale #1 was not exposed to the open market, it might not be reflective of the subject's market value.

Norusis further agreed that sale #2, located 40 miles south of the subject, was for two buildings and not one like the subject. In addition, sale #2 was considered light manufacturing and not a distribution warehouse, like the subject. Norusis explained that the subject had space that could be utilized for light manufacturing. Norusis agreed that the PTAX-203 form indicated that sale #2 was not advertised for sale or sold using a real estate agent. Upon questioning, counsel for the appellant brought out that sale #3 may have been on the market for only three months and not the estimated market exposure time of six months as suggested was appropriate for an arm's-length-transaction in the CB Richard Ellis appraisal. Further, sale #3 was occupied with a lease tenant at the time of sale and a CoStar document submitted by taxpayer/intervenor's counsel confirmed that the tenant would remain occupying the single tenant building upon completion of the sale (marked as Exhibit "H"). Norusis acknowledged that he applied an adjustment to sale #5 for age because it was one year newer than the subject, however, he did not apply an adjustment for age to sale #2 which was even newer than sale #5 at less than one year old. Norusis did not adjust any of the sale comparables for size or location.

Norusis did, however, make an upward adjustment for economics to sale #4, even though it was located in the same submarket as the subject, approximately one-mile from the subject. Kleszynski analyzed six sales, all of which were located in Carol Stream, like the subject. Kleszynski's sale comparables sold from December 2004 to October 2006 for prices ranging from \$2,230,000 to \$8,847,000 or from \$77.62 to \$91.58 per square foot of building area, including land. Norusis' sale comparables sold from January to December 2005 for prices ranging from \$5,850,000 to \$38,250,000 or from \$46.45 to \$64.14 per square foot of building area, including land. Norusis testified that he also prepared a backup analysis based on a net income multiplier analysis. Norusis estimated the net operating income for the subject of \$4.07 per square foot of building area as found in his income approach analysis. Information obtained on the five sales in the sales comparison analysis indicated they had net operating income ranging from \$3.85 to \$4.69 per square foot of building area. Norusis then used the price per square foot for each sale and divided it by the net operating income per square foot of each sale to develop a net income multiplier for each comparable sale. Norusis then applied the net income multiplier to the estimated net income for the subject property to arrive at an indicated price per square foot which was used as a secondary check of the direct adjustments made in the sales comparison approach. The indicated range of value was from \$49.28 to \$58.84 per square foot with an average of \$53.11 per square foot. Norusis testified that the values based on the net operating income multiplier were consistent with the direct sales comparison approach analysis.

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The Board finds Norusis' adjustments were inconsistently applied based on the physical differences of the sale comparables when compared to the subject. In addition, the Board further finds Norusis utilized properties outside of the subject's immediate market area, even though sales of distribution warehouses located in close proximity to the subject existed at or close to the date of valuation. The Board finds these factors undermine the veracity and validity of the CB Richard Ellis appraisal report. Norusis applied a net income multiplier to the sale comparables, however, as pointed out by counsel, the sale comparables were dissimilar to the subject in size and location and therefore the Board placed little weight on the income multiplier analysis as utilized by Norusis. The Board finds it problematic that the sale comparables were not adjusted for size and location, because the Board finds they were significantly dissimilar to the subject based on size and location while more similar properties existed. The Board further finds it problematic that Norusis was unable to testify as to whether his comparable sales were exposed to the open market, a critical component of an arm's-length transaction, which calls into question whether they are truly representative of the subject's fair market value.

The Board finds Kleszynski's sale comparables were most similar to the subject property based on use, size, location and most features. The Board gave most weight in its analysis to Kleszynski's sale comparables #1, #3, #4 and #5. The Board gave less weight to Kleszynski's sale comparable #2 because sale #2 occurred in 2004 and the testimony revealed the market was trending upward with record prices. In addition, the Board gave less weight in its analysis to Kleszynski's sale #6 because the testimony revealed this sale transaction may have involved a sale-lease-back provision. The four most representative sales in this record sold in either November 2005 or August 2006 for prices ranging from \$77.62 to \$91.58 per square foot for building area, including land. The Board finds this to be a fairly tight range of comparable properties. All were located in close proximity to the subject, were similar in size to the subject, contained many of the same features as the subject and sold nearest in time to the tax lien date of January 1, 2006. The Board finds Kleszynski made competent, logical and reasonable qualitative adjustments (see pages 43-44 of Appellant's appraisal report) to the comparables for differences when compared to the subject in arriving at the final opinion of value of \$7,725,000 or \$78.00 per square foot of building area, including land. The Board finds this estimate to be at the low end of the established range and well supported in this record.

The Board further finds the value conclusion determined by Kleszynski to be better supported than Norusis' value conclusion based on the comparable sales and testimony elicited at hearing.

Considering the totality of the evidence in this record, the credibility of the witnesses and giving more deference to Kleszynski's final value conclusion under the sales comparison approach, the Board finds the subject property's estimated market value of \$5,761,066 or \$58.22 per square foot of building area, including land as reflected by its assessment is incorrect and not supported.

The Property Tax Appeal Board finds the appellant, Consolidated Community School District No. 93, submitted the best evidence regarding the subject's fair market value. Thus, the Board finds the subject property had a market value of \$7,725,000 as of January 1, 2006. Since market value is established, the 2006 three-year average median level of assessments for DuPage County of 33.21% shall apply.

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<b>APPELLANT:</b>	<b>Duelm Enterprises LP</b>
<b>DOCKET NUMBER:</b>	<b>09-04322.001-I-2</b>
<b>DATE DECIDED:</b>	<b>March, 2013</b>
<b>COUNTY:</b>	<b>DuPage</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property is improved with what is described as a one-story commercial building with approximately 11,842 square feet of building area. The building was constructed in 1923. The property has a land to building ratio of .97:1. The property is located at 222-226-230 Front Street, Wheaton, Milton Township, DuPage County.

The appellant appeared by counsel contending over valuation as the basis of the appeal. In support of this argument the appellant submitted a report, marked as Appellant's Ex. #1, prepared by Lee H. Neuschaefer of Barron Corporate Tax Solutions (Barron). Neuschaefer estimated the subject property had a market value of \$1,400,000.

Neuschaefer was called as the appellant's witness. He has a degree in Business Administration from Elmhurst College and the Certified Assessment Evaluator (CAE) designation from the International Association of Assessing Officers (IAAO). In 1973 the witness began working in the York Township Assessor's Office as the commercial/industrial field man and chief deputy assessor. In 1981 Neuschaefer began doing valuation analysis work in the private sector for ad valorem tax purposes for commercial and industrial property owners. He asserted that he has testified before the Illinois Property Tax Appeal Board, the Michigan Tax Tribunal, the Kansas State Tax Commission and the Missouri State Tax Commission.

The appellant's witness described the property as being a .27 acre site improved with a retail structure with 11,842 square feet of building area that was constructed in 1923. Neuschaefer also testified the building has three retail tenants composed of two restaurants and a salon. The witness testified that in 2009 the subject property had two tenants in 222 and 230 Front Street while 226 Front Street was vacant. The witness testified that appellant's rebuttal Exhibit A disclosed that 226 West Front Street was listed as having 3,500 square feet of building area with a listing rental of \$17.50 per square foot of building area. In estimating the value of the subject property Neuschaefer used the sales comparison approach to value and the income approach to value.

Neuschaefer submitted information on three comparable sales located in Wheaton, Glen Ellyn and Elmhurst. The comparables ranged in size from 3,892 to 14,618 square feet of building area and were built from 1904 to 1948. Comparable #1 was improved with a three-story three tenant building, constructed in 1948 with a land to building ratio of .60:1. The comparable was located ½ block from the subject. This property sold in June 2008 for a price of \$2,500,000 or \$171.02 per square foot of building area, land included. Comparable #2 was improved with a two-story two tenant building built in 1914 with a land to building ratio of .82:1. This property sold in August 2008 for a price of \$675,000 or \$173.43 per square foot of building area including land. Comparable #3 was improved with a three tenant building constructed in 1904 with a land to building ratio of 1:1. This property sold in June 2008 for a price of \$850,000 or \$127.23 per

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square foot of building area, including land. After considering adjustments to the comparables for time, size and age Neuschaefer estimated the comparables had adjusted prices ranging from \$99.24 to \$141.95 per square foot of building area, including land. Using these sales the appellant's witness estimated the subject property had an indicated value of \$125.00 per square foot of building area, land included, for a total value of \$1,480,000.

The appellant's witness also developed the income approach to value. Referencing appellant's rebuttal Exhibit B, Neuschaefer testified that he obtained information from the property owner that the subject's rental income for 2008 was \$185,588. He also testified that the owner indicated that the expenses were \$32,209. The witness also provided testimony that the property located at 230 Front Street with 4,800 square feet of building area had a modified gross rent of \$15.00 per square foot and the property at 222 Front Street with 3,800 square feet of building area had a modified gross rent of \$18.95 per square foot. The witness explained within his report that he attributed a rental of \$17.50 per square foot of building area for the space at the subject property that was vacant for 5 months in 2008 and added that to the \$185,588 to arrive at a potential gross income of \$211,000. The potential gross income equates to a rent of approximately \$17.81 per square foot of building area, which the witness indicated was within the range of retail space on Roosevelt Road. Neuschaefer next deducted 10% of potential gross income or \$21,100 for vacancy and collection loss to arrive at an effective gross income of \$189,900. The vacancy rate was based on brokers that the witness has talked to. The witness next deducted the actual expenses for 2008 of \$32,209 as reported by the owner to arrive at a net income of \$157,691. Neuschaefer next estimated the capitalization rate of 9.40% to which he added an effective tax rate to arrive at an overall rate of 11.69%. The capitalization rate was determined by using the Real Estate Research Corporation (RERC) capitalization rate study for the 4<sup>th</sup> quarter of 2008. The RERC studies showed second tier power center properties had an average going in capitalization rate of 9.0% and third tier power center properties had an average going in capitalization rate of 9.8%. Capitalizing the net income of \$157,691 using an overall capitalization rate of 11.69% resulted in an estimated value of \$1,349,000.

Using these two estimates of value Neuschaefer estimated the subject property had a market value of \$1,400,000 or \$118.22 per square foot of building area, including land, as of January 1 2009. Based on this evidence the appellant was requesting the subject's assessment be reduced to reflect the appraised value.

Under cross-examination Neuschaefer testified he considered the subject to be in fair condition. He further testified he inspected the interior of the subject property. He stated there was an error on page 9 of his report that stated the interior of the property was not inspected. The witness also stated there was an error on page 3 of his report where he indicated a value conclusion of \$188.22 per square foot of building area. The witness explained that his time adjustment on page 5 reflected a negative two percent per month due to the market downturn. Neuschaefer also explained the age adjustments were based on percentages.

The witness also explained that the rent for the vacant space of \$17.50 per square foot was based on the asking rent. Neuschaefer also explained that the term "modified gross" as it relates to the rent means the tenants are paying some of the expenses. He further explained the second and third tier investment categories were selected due to the subject's age and the RERC study was for the Midwest.

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Neuschaefter further testified he is not a licensed appraiser in the State of Illinois nor any other state. He also agreed that he had developed an opinion of value for the subject property although he testified the report is probably not technically considered an appraisal. The witness was shown Intervenor's Exhibits #2 and #3, containing definitions of "appraisal" from the 13<sup>th</sup> Edition of the Appraisal of Real Estate and the Appraisal Institutes Uniform Standards of Professional Appraisal Practice (USPAP), respectively.<sup>1</sup> After reading these definitions Neuschaefter did not believe he had prepared an appraisal and did not believe he was acting as an appraiser during the hearing.

Neuschaefter was questioned about his Certification on page 2 of the report where he states in part that, "Barron Corporate Tax Solutions, Ltd., is not performing services that constitute appraisal practice . . . but is providing consulting services which is not under the purview of the Uniform Standards of [Professional] Appraisal Practice (USPAP)." The witness was shown Intervenor's Exhibit #4, which was Standard 4: Real Property Appraisal Consulting, Development from USPAP 2010-2011 Edition.<sup>2</sup> The witness was also shown Intervenor's Exhibit #5, which was Standard 5: Real Property Appraisal Consulting, Reporting from USPAP 2010-2011 Edition. The witness was of the opinion he prepared his consulting services in conformity with Standard 4. The witness thought he covered the certification in varying degrees although he acknowledged he did not make a similar statement with respect to having no bias with respect to any property that is the subject of the report. The witness further testified he did not know specifically what he was referring to in the Certification when he used the word "privileged."

Neuschaefter also agreed that in the income approach he used actual expenses and income from the subject property. The witness explained that although he used the subject's actual numbers, he thought they reflect market conditions. He agreed, however, his report contained no market surveys with respect to market conditions. The witness was of the opinion his income approach was not a leased fee analysis even though he used the subject's actual income and expenses. Neuschaefter was also questioned about the development of his capitalization rate based on "power centers." He explained that a power center is like a 100,000 square foot facility with a typical tenant being a Best Buy or a Target. The witness agreed that a better comparison might be the higher capitalization rate in a neighborhood community shopping center.

The witness also agreed that his three comparable sales were rented at the time of sale but he was not privy to the rental rates. He further testified his comparable sale #3 was the only one-story building with three tenants, similar to the subject.

Neuschaefter further testified he is a salaried employee but Barron's fee is contingent on the outcome of the appeal meaning the company gets a percentage of the tax savings. If there are no tax savings Barron's does not get paid.

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<sup>1</sup> Exhibit #2's definition of appraisal read, "The act or process of developing an opinion of value." Exhibit #3's definition of appraisal read, "The act or process of developing an opinion of value; an opinion of value. Also known as valuation."

<sup>2</sup> The intervenor had previously submitted Standard 4: Real Property Appraisal Consulting, Development from USPAP 2008-2009 Edition, as Exhibit B.

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In redirect Neuschaefer was of the opinion that both the subject's rental rates and expenses were reflective of the market.

The board of review (BOR) submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling \$625,570 was disclosed. The subject's assessment reflects a market value of \$1,880,848 or \$158.83 per square foot of building area, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26%. In support of the assessment the BOR submitted an analysis prepared by the Milton Township Assessor's Office, which was marked as BOR Exhibit #2.

The BOR called as its witness Cathy Zinga, Commercial Deputy Assessor for Milton Township. Zinga has the Certified Illinois Assessing Officer (CIAO) designation. She testified that she was familiar with the subject property and that her job at the Assessor's Office was to value commercial properties. She testified that she prepared the report that was submitted on behalf of the BOR.

Zinga testified that she developed the sales comparison approach and income approach to value in support of the assessment. She testified the subject was considered in average condition for its age. The witness stated that since 1998 there have been \$640,000 in renovations to the property. She testified that the HVAC, the electrical and the plumbing have been updated. She further stated that the subject has had a new fire alarm system installed, a new roof and exterior renovations.

Zinga used seven comparable sales in the sales comparison approach with her sale D being the same property as Neuschaefer's sale #1. The sales were located in Wheaton, Carol Stream, Elmhurst and Naperville. Her report included a map depicting the location of her comparable sales as well as Neuschaefer's comparable sales. The comparables were improved with one 1-story building, five 2-story buildings and one 3-story building that ranged in size from 2,992 to 21,304 square feet of building area. The buildings were constructed from 1890 to 2007 and the properties had land to building ratios ranging from .48:1 to 4.68:1. The sales occurred from February 2006 to April 2009 for prices ranging from \$550,000 to \$5,100,000 or from \$171.02 to \$385.71 per square foot of building area, including land.

In support of her estimate of market rent, Zinga submitted copies of listing sheets reporting lease rates ranging from \$18.00 to \$26.00 per square foot. She also provided a listing for a property located on Main Street in Wheaton with rental rates ranging from \$18.35 to \$40.25 per square foot of building area. Based on this data she estimated the subject property had a gross rental rate of \$21.50 per square foot of building area resulting in a potential gross income of \$254,603. Zinga determined the subject property had a vacancy and collection loss of 6% or \$15,276 based on a 2010 survey using 2009 data from owners that replied. Deducting the vacancy and collection loss resulted in an effective gross income of \$239,327. From this she deducted expenses in the amount of \$32,209, the same as used by Neuschaefer, to arrive at a net operating income of \$207,118. She next estimated the subject property would have a capitalization rate of 8.50% using a local study and Korpacz Realty Advisors, which reported an overall capitalization rate for a neighborhood center for the first quarter of 2009. To this she added an effective tax rate of 2.34% to arrive at a total capitalization rate of 10.84%. Capitalizing the net income she estimated the subject property had an estimated value under the income approach of \$1,910,683.

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Based on this evidence, the board of review requested confirmation of the subject's assessment.

Under cross-examination Zinga testified she began working with the Milton Township Assessor's Office in 2006 and for the first two years she did residential work. She further stated she is not an appraiser and does not belong to any appraisal societies. She further stated other than seeing the subject building from the outside she had not inspected the building.

Zinga testified that in estimating the market rent she used rental rolls from downtown Wheaton owners that responded to a survey, LoopNet, the MLS and reviewed current asking rents.

Zinga testified the first floor of her comparable sale A was used as a real estate office. She further testified she did not make any adjustments to her sales. Her comparable sale B was used as a medical office building. She also agreed that this property was reported to have a bad warranty deed. She agreed that her comparable sale C was not located in downtown Wheaton and is a multi-tenant free-standing building. With respect to comparable sale G, this property had residential and/or office units.

Zinga also explained that on page 31 of her report was another graph of capitalization rate trends with the title Cap Rate Trends in 2010 – Champion Partners Commercial Real Estate. For the first quarter in 2009 the graph showed a capitalization rate for the Midwest of 6.68%.

In support of its position, the intervenor submitted a brief and data sheets on comparable sales which included Neuschaefer sales #1 and #2 and Assessor comparable sales D, E and F. The data included one additional sale located at 109 W. Schiller Ct., Elmhurst. This property was improved with a two-story retail/office building with 12,272 square feet of building area. The building was constructed in 1932 and the property had a land to building ratio of .59:1. The sale occurred in August 2007 for a price of \$2,000,000 or \$162.97 per square foot of building area, including land. The intervenor called no witnesses.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record does not support a reduction in the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the appellant did not meet this burden of proof and a reduction in the subject's assessment is not warranted.

The appellant submitted a report prepared by Lee Neuschaefer, CAE, of Barron Corporate Tax Solutions containing an estimate of value of \$1,400,000. During the hearing Neuschaefer asserted this was not an appraisal even though he and the report offered an opinion of value. The Board finds this testimony not to be credible. Furthermore, Neuschaefer testified that Barron Corporate Tax Solutions' fee is contingent on the outcome of the appeal. He explained that the

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company gets a percentage of the tax savings and if there are no tax savings Barron's does not get paid. The Board finds the fact that Neuschaefer's employer's fee is contingent on the outcome of the appeal calls into question the objectivity of the preparer of the report. Neuschaefer, in fact, stated within the Certificate on page 2 of his report that, "Barron Corporate Tax Solutions, Ltd. is not performing services that constitute appraisal practice, requiring impartiality . . . ." The Board finds that Barron's has a direct pecuniary interest in the outcome of the appeal that may result in a biased report. The Board finds that by his employer having a direct interest in the outcome of the hearing undermines Neuschaefer's testimony as an impartial unbiased expert.<sup>3</sup> For these reasons the Board finds Neuschaefer's testimony, the report and the opinion of value offered by Neuschaefer are not credible.

In reviewing the evidence offered by the appellant and that offered by the board of review, the Property Tax Appeal Board finds the evidence and testimony presented by the BOR to be more credible. With respect to the income approach, the testimony and evidence provided by Zinga supported the conclusion the subject's estimated rent of \$21.50 per square foot of building area was market derived. The Board further finds that her testimony with respect to estimating the vacancy and collection loss was credible and reflective of local market conditions. The Board further finds Zinga used the same expenses as Neuschaefer in calculating the subject's net income. The Board further finds that Zinga's estimate of the overall capitalization rate was better supported by reference to two published sources and a survey of the local market. Neuschaefer's estimate of the capitalization rate was derived from reference to "power centers" described as 100,000 square foot facilities with a typical tenant being a Best Buy or a Target. The Board finds a "power center" is not reflective of the subject property. For these reasons the Board finds Zinga's estimate of value under the income approach of \$1,910,000, rounded, is better supported and more credible than the estimate developed by Neuschaefer.

With respect to the sales comparison approach, the Board finds Zinga's sales A, B and D are most similar to the subject in location and occurred most proximate in time to the assessment date at issue. Furthermore, Zinga's sale D is the same property as Neuschaefer's sale #1. These three sales had varying degrees of similarity to the subject property in that they differed from the subject in story height and in size with two being significantly smaller than the subject with 2,992 and 3,264 square feet of building area, respectively. The comparables sold from June 2008 to April 2009 for prices ranging from \$550,000 to \$2,500,000 of from \$171.02 to \$261.03 per square foot of building area, including land. The comparable sale common to both witnesses sold in June 2008 for a price of \$2,500,000 of \$171.02 per square foot of building area. The subject's assessment reflects a market value of \$1,880,848 or \$158.83 per square foot of building area, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26%, which is well supported by the best sales in the record.

In conclusion, based on this record, the Board finds the assessment of the subject property as established by the board of review is correct and a reduction is not justified.

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<sup>3</sup> The Property Tax Appeal Board finds that the IAAO, the organization which awarded Neuschaefer his CAE designation, has a Code of Ethics and Standards of Professional Conduct which was adopted by the IAAO executive Board, September 19, 2005. IAAO Ethical Rule ER 3-3 provides: It is unethical to accept an assignment or participate in an activity where a conflict of interest exists and could be perceived as a bias, or impair objectivity.

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<b>APPELLANT:</b>	<b><u>Kmart Corporation</u></b>
<b>DOCKET NUMBER:</b>	<b><u>07-20658.001-C-3</u></b>
<b>DATE DECIDED:</b>	<b><u>September, 2013</u></b>
<b>COUNTY:</b>	<b><u>Cook</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of a 402,133 square foot parcel of land improved with a 40-year old, one-story, freestanding, masonry department store containing 107,325 square feet of building area. The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value.

In support of this argument, the appellant submitted a complete summary appraisal report. The appraisal has a valuation date of January 1, 2007. The appellant presented the testimony of the appraisal's author, Terrence P. McCormick of McCormick & Wagner, LLC. Mr. McCormick testified he is co-owner of McCormick & Wagner, is an Illinois certified general real estate appraiser, and holds the MAI designation from the Appraisal Institute. He testified he has been an appraiser for 34 years and has appraised over 150 properties that are similar to the subject. He stated he has been qualified as an expert previously in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. Without objection, the PTAB accepted Mr. McCormick as an expert witness in appraisal theory and practice.

McCormick testified he inspected the interior and exterior of the subject on December 28, 2005 and February 29, 2008.

The witness described the subject property and its environs. He described the subject's location within a shopping district and the surrounding stores. McCormick testified the subject contains approximately 107,000 square feet of building area and was constructed in 1967. He opined the highest and best for the subject as vacant is commercial use and the highest and best use as improved is continuation as a retail building. He further opined an economic life for the subject of 30 with an effective age of 20 years.

McCormick developed the three traditional approaches to value in estimating the subject's market value. The cost approach indicated a value of \$4,740,000, rounded, while the income approach indicated a value of \$4,100,000, rounded. The sales comparison approach indicated a value of \$4,290,000, rounded. The appraiser concluded a market value of \$4,300,000 for the subject property as of January 1, 2007.

The initial step under the cost approach was to estimate the value of the land at \$8.00 per square foot or \$3,220,000, rounded. In doing so, McCormick testified he considered seven land sales located in Des Plaines, as the subject is. These properties sold from November 2003 to November 2006 for prices ranging from \$4.71 to \$15.42 per square foot.

Using the Automated Marshall Valuation Service, and a survey of local cost indexes, the appraiser estimated the reproduction cost new to be \$7,120,837. McCormick testified he added

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site improvements of \$500,000 for a total reproduction cost of \$7,620,837. In establishing a rate of depreciation, McCormick testified he analyzed nine sales of properties included in the sales comparison approach. The appraisal indicates an annual rate of depreciation between 1.5% and 2.6%. McCormick established a total depreciation of 80% which is an average annual rate of depreciation of 2% to arrive at the depreciated value of the improvements at \$1,524,167. Adding the land value resulted in a final value estimate of \$4,740,000, rounded, under the cost approach.

Under the income approach, McCormick testified the subject is leased on a long-term basis. He stated that the lease as of the date of value was 40 years old and had an additional 40 years of option periods going forward. McCormick testified he did not use the subject's actual rental data in establishing income. He testified he reviewed the leases or offerings of eight rental comparables. McCormick described the comparables. These properties ranged in size from 28,220 to 147,245 and have leased or asking rates of \$2.50 to \$7.00 per square foot of building area. McCormick opined that age was an important factor in comparing the properties because older properties require more renovation to bring them up to current standards. McCormick estimated the market rent to be \$4.75 per square foot of building area. This resulted in a potential gross income of (PGI) \$509,794. Vacancy and collection loss was estimated at 10% of PGI and reserves for replacement and management fees were estimated at 2% each. Therefore, the effective net income (ENI) was estimated at \$440,463.

In determining the appropriate capitalization (CAP) rate, McCormick testified he utilized the band of investment technique as well as analyzed the nine sales used in the sales comparison approach. He testified these sales indicated an overall range from 10.3% to 13.3%. McCormick testified he applied an overall CAP rate of 10.75% to the ENI to estimate the market value for the subject under this approach at \$4,100,000, rounded.

The final method developed was the sales comparison approach. McCormick testified he used sales of properties located within Cook County. McCormick described each of the nine comparables. The properties range in building size from 80,000 to 193,000 square feet and sold from May 2002 to August 2007 for prices ranging from \$2,000,000 to \$9,700,000, or from \$13.00 to \$78.42 per square foot of building area, including land. The properties ranged in age from 10 to 32 years and in land to building ratio from 1.80:1 to 5.33:1.

McCormick testified he performed an analysis based on the price per square foot of building area, including land and performed a secondary analysis of the price per square foot of building area, excluding land. He testified he estimated a value for the subject of \$40.00 per square foot of building area, including land which yields a value for the subject property under the sales comparison approach of \$4,290,000, rounded.

McCormick testified that for a property of this size and nature, the market is a broader area than it would be for a smaller property so the comparable sales were found within the whole of Cook County. He further testified the comparables were all newer than the subject, but they were the sales that were available. He stated the average market time for these comparables was 19 months.

In reconciling the various approaches, McCormick testified he gave the most emphasis to the sales comparison approach, secondary weight to the income approach and the least amount of

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weight to the cost approach. After reconciliation, the appraisal estimated the value for the subject property as of January 1, 2007 to be \$4,300,000.

Under cross-examination by the board of review, McCormick testified the subject property is located approximately one and one-half miles from O'Hare Airport and one mile from interstate highways. He opined that the subject is located in an area that is desirable for retail as it's on a major street, but that the immediate area hasn't seen recent large commercial development. He opined that shoppers were not coming from the interstate highways to the subject, but from the community.

McCormick testified the subject's actual rental rate is \$42,000 per year. He opined this was an extremely low rental rate. He also opined the subject's seven drive-in loading doors may be over-adequate for its use. He did acknowledge that there was more of a problem for a property that had less than adequate loading docks than more than adequate.

As to the land sales in the cost approach, McCormick acknowledged that land sale #1 was smaller than the subject and testified it was located nine miles north from the subject. He opined that property located closer to the airport may not be more valuable based on its use. He testified that greater density has the potential for more shoppers and sometimes attracts more commercial users. As to land sales #6 and #7, McCormick testified they are comparable to the subject in nature as large retail users. He stated that smaller sites tend to sell for a higher unit price. He testified that some of the land sales are smaller and some are larger and that the larger ones are being used for a similar use as the subject. He testified that land sales #2, #3 and #5 have less desirable locations than the subject. McCormick testified he did not average the land sales to arrive at an estimated land value for the subject.

As to the rental comparables in the income approach, McCormick testified rental #1 is in a less desirable location. He acknowledged the tax rate for this location is higher and would be considered in a rental rate. He testified rental #2, which he has personally appraised, has more commercial development at this location than the subject's area. He acknowledged the mall at rental #2's location has vacancy. He also agreed that the socioeconomic factors are different in this area than in the subject's. McCormick testified the mall where rental #4 is located was doing well as of the date of value. He acknowledged that rental #6 is located in DuPage County and is a current offering. He confirmed that rentals #1, #6 and #8 were current offerings and that #8 is also located in DuPage County.

McCormick testified he performed the band of investment and the market extraction techniques to develop the capitalization rate. He testified that two of the sales within the sales comparison approach, #5 and #8, were leased fee sales. He testified he estimated the rent for sale #8 because the seller was going out of business and the buyer knew the property would be vacant after the sale. In addition, he opined that sale #5 was converted into a fee simple sale when the lessee purchased the property. He testified that his capitalization rate of 10.75% was opined from the analysis of the band of investment which was 10.25% and the market extraction method which indicated a range of 10.3% to 13.3%. He acknowledged that the net income listed for the sales comparables are his estimates.

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McCormick testified that his vacancy and collection rate was his opinion based on a review of the market as well as his management fees and reserves for replacement.

As to the sales comparison approach, McCormick was shown *Board of Review's Exhibit #1*, a copy of the Chicagoland area map included within McCormick's appraisal. McCormick marked off in blue pen the general location of the sales comparables on the map. McCormick acknowledged that only sale #5 and the subject property are located north of the I-90 expressway. He testified that sale #7 is 42 miles away from the subject, sale #8 is 34 miles away, and sale #3 is 48 miles away. He opined that the sales all have adequate loading docks.

McCormick testified sale #1 was purchased by a business college. He testified that sale #2 was vacant at the time of sale, but not distressed. He also opined that sale #3 was not a distressed sale and testified it was on the market for three years. He testified he considered this location inferior to the subject. He also considered sale #7's location inferior. He acknowledged that sale #7 was from 2002 and testified he made adjustments for the age of the sale.

Under cross-examination by the intervenors, McCormick testified he did not take interior photographs of the subject property because he did not want to disrupt customers. He opined that he described the interior sufficiently in the appraisal.

McCormick was shown *Intervenors' Exhibit #2*, a copy of a website printout for the City of Des Plaines. McCormick acknowledged that the printout indicates the City of Chicago is 17 miles from Des Plaines. *Intervenors' Exhibit #3*, a copy of a Mapquest printout, indicates Des Plaines is 18.86 miles from Chicago.

McCormick acknowledged the subject is located at the corner of two major arterial roads. He agreed the subject has a good location. He was unaware of the traffic counts on the two roads that the subject is located on. He testified traffic counts could be an attraction if there is not an oversupply of retail properties at that location. He also testified that the speed of traffic is also a factor. He opined that the traffic flow at the subject's location was adequate.

McCormick testified he did not utilize the age-life method when depreciating the subject under the cost approach. He testified he has used this method in the past when there is no market derived data available. He acknowledged that the subject's depreciation rate using the age-life method would be 67%. He testified he utilized the market extraction method. He acknowledged he estimated the land value, the building remainder, and the cost new are estimated. He agreed that if any of these estimates are off or changed, the indicated depreciation would change.

As to the land sales in the cost approach, McCormick testified that land sale #1 is not located on a corner, but is slightly off the corner with frontage on two streets. McCormick acknowledged land sales #2 and #3 are located on corner parcels with one road elevated which means there is no access off of Palatine Road for these properties. McCormick was shown *Intervenors' Exhibit #4*, a CoStar printout detailing land sale #3 with a Sidwell map attached. McCormick confirmed that the subject could not be built on this property. He testified that land sale #4 was developed with a hotel which is a different use than a big box store, but still commercial. McCormick testified that land sale #5 set aside approximately 10% of land for water retention. He did not know the traffic counts for land sale #6. McCormick testified that land sale #7 also has set asides

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for water retention as well as a park. He testified he knows the traffic counts for this sale are high, but could not give the exact number.

In the income approach, McCormick testified rental #1 was vacant for eight years. He acknowledged this property was distressed. He testified rental #2 shares a common wall with a factory. He testified this rental was built during World War II and was once an industrial building. He acknowledged there are some crime problems at the mall this rental is located in. McCormick confirmed that rental #3 is located on the same street as the subject, but south of the airport and is similar in size; he acknowledged this property lease for over \$6.00 per square foot. He acknowledged the lease is for 29,000 square feet of building area which is less than a third of the subject. He testified rental #7 is also smaller than the subject and located 30 miles from the subject. He acknowledged that the appraisal does not contain a written analysis of these rentals.

McCormick acknowledged that the appraisal does not contain a written analysis to determine the vacancy and collection rate which McCormick estimated at 10%. He testified the subject has not been vacant since the inception of its lease in 1967.

As to the capitalization rate, McCormick confirmed he used the band of investment and the direct capitalization methods. He opined that investors want a 15-year mortgage term for large commercial properties. In addition, he testified that your mortgage term should not exceed the remaining economic life of the property.

McCormick testified that seven of the nine sales he used for the direct capitalization analysis were not rented and he estimated the rent for all nine properties. He testified that any change in the net income calculation would change the overall rate.

McCormick was shown *Intervenors' Exhibit #5*, a CoStar printout detailing sale #5 within the sales comparison approach. The document indicates an annual gross income of \$521,601 which produced a capitalization rate of 6.47%. The appraisal estimated the net operating income for this comparable at \$940,000 which indicated a capitalization rate of 10.5%. McCormick opined that this sale was not a leased fee transfer because the tenant purchased the property. He acknowledged that his income estimate was 80% higher than what was reported in CoStar. McCormick was shown *Intervenors' Exhibit #6*, a copy of a page from a *Korpacz* survey listing capitalization rates for the first quarter of 2007. McCormick testified he chose a rate slightly above the high end of the range listed in *Korpacz*. McCormick testified he estimated the subject's net operating income at \$4.10 per square foot of building area. He agreed this amount is lower than the \$8.21 per square foot of building area for comparable #5.

As to the sales comparables, McCormick testified that sale #1 is located in the northernmost part of the mall and has a traffic control signal for ingress and egress in front of the building. He acknowledged the highest and best use changed. As to sale #2, McCormick acknowledged the area around this comparable has a lower income per household than the subject. McCormick acknowledged that a portion of sale #3's building was demolished after there was an attempt to lease it. McCormick testified sale #4 is located three blocks from sale #2 and has a lower income per household than the subject. He did not know the traffic counts for sale #6. McCormick acknowledged sale #8 was a free standing building that was part of the mall. McCormick

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testified that sale #5 is the only sale within the northwest suburbs of Cook County and this property sold for \$78.42 per square foot.

In redirect, McCormick testified the *Korpacz* survey was not based on fee simple sales, but on leased fee transactions. He further testified the capitalization rate he developed was a fee simple rate based on market rent as of the date of value. He opined that leased fee capitalization rates are typically lower because the analysis is based on the strength of the tenant.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$2,202,305 was disclosed. This assessment reflects a fair market value of \$5,795,539 or \$54.00 per square foot of building area, land included, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property is applied.

In support of this market value, the notes included raw sales information on six properties suggested as comparable to the subject. These properties range in size from 98,774 to 121,507 square feet of building area. They sold between July 2003 and July 2008 for prices ranging from \$3,550,000 to \$23,630,000 or from \$35.94 to \$194.47 per square foot of building area, including land.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessment.

In support of the intervenors' position, the intervenors submitted a summary appraisal of the subject prepared by Michael S. MaRous with MaRous & Company with an effective date of January 1, 2007 and an estimated market value of \$5,900,000. Mr. MaRous testified he has been an appraiser for 33 years and is president of his appraisal company. He stated he is a licensed general real estate appraiser and holds the MAI designation from the Appraisal Institute. He testified he has been involved in the publication of the book entitled Appraisal of Real Estate. MaRous testified he has appraised all types of properties and has attended numerous seminars in regards to valuation of large retail properties. He stated he has undertaken hundreds of appraisals in Des Plaines with the majority being for commercial or retail use. He testified he has appraised properties for Costco, Target, Kmart and many other major retail developers. Finally, he testified he has appeared as an expert witness before the Property Tax Appeal Board, the Circuit Court of Cook County, and federal court. The Property Tax Appeal Board accepted Mr. MaRous as an expert witness in the valuation of commercial properties without objection from the remaining parties.

MaRous testified he inspected the subject on multiple occasions the first time being in April 2009 and the last prior to hearing on April 14, 2013. He described the subject and its environs. He opined the subject has the benefit of close proximity to interstate systems. He testified the traffic count for the two roads the subject is on is approximately 45,000 cars a day. He opined that the traffic count is a huge factor for the subject. MaRous opined the subject's highest and best use as improved is continued retail use.

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MaRous utilized the three traditional approaches to value to estimate a market value for the subject as of January 1, 2007 of \$5,900,000.

Under the cost approach to value, MaRous further described the subject's location and the details of the underlying land. He noted the subject does not require water retention ponds for storm water management.

MaRous testified he analyzed five land sales. He described the sales which sold from November 2003 to September 2006 for prices ranging from \$6.99 to \$23.35 per square foot. He testified land sale #1 was purchased, the building on the site was razed and a small retail building was built on the site. Sale #2 was developed with a mid-quality hotel facility. Sale #3 was purchased to build a drive-in bank. MaRous testified sale #4 was a large commercial site developed with a Target store. He testified sale #5 was developed with a modern movie theater. MaRous testified he made adjustments to arrive at an estimate of value for the land at \$12.00 per square foot or \$4,825,000, rounded. Using Marshall Valuation Services, MaRous estimated a cost new of \$60.00 per square foot of building area or \$6,439,500.

As to depreciation, MaRous testified he estimated the subject's effective age at 35 years with an economic life of 50 for a physical depreciation rate of 70%. He testified he estimated functional depreciation at 10% because of the depth and ceiling height of the store. The appraisal also includes an analysis of the sales comparables to determine depreciation. This data showed an annual depreciation rate from 1.2% to 8.4%. MaRous testified he estimated a final rate of depreciation at 85% which, when applied, reflected a cost new of \$965,925. Site improvements of \$200,000 and the land value were added to this amount for a final value under the cost approach of \$5,990,000, rounded.

Under the income approach to value, MaRous testified the subject is an income producing property in that it is leased. He opined that the lease was a ground lease negotiated in the 1960s for \$42,000 per year or less than \$1.00 per square foot of building area.

MaRous testified he looked for rental comparables located in the northwest or western suburbs that were 40,000 to 130,000 square feet of rental area. He testified he focused on large size, big box spaces. MaRous utilized 10 comparables with rental or offering rates of \$2.50 to \$8.75 per square foot of rentable area to estimate the subject's rent at \$6.50 per square foot of building area. He testified he considered location, population, traffic counts, and the fact that the subject has been renting the property for 40 years. MaRous estimated a potential net income of \$697,600. He testified that the subject property has not experienced any vacancy in 40 years, but that the overall big box market is softer than it was and MaRous applied a 10% vacancy and collection factor for an effective net income of \$627,840.

MaRous testified he partially loaded the property taxes in the capitalization rate analysis. He testified he also applied \$2.50 per square foot for holding costs, 4% for management fees, 4% for miscellaneous, and 2% for reserves for total expenses of \$77,060. This reflected a net operating income of \$550,780.

As to the capitalization rate, MaRous testified he used the direct capitalization and band of investment methods and reviewed market surveys. He testified he was able to develop a

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capitalization rate from sales #2 and #6. The sales indicated capitalization rates of 6.5% and 9.4%, respectively. He also testified that Korpacz surveys indicated a range from 5.8% to 9% with an overall rate of 7.38%. MaRous testified that the lower rates applied to new, very modern, extremely well located properties with strong credit tenants. MaRous then described how he applied the band of investment method. MaRous chose a capitalization rate of 8.75%.

MaRous testified he loaded the capitalization rate for the vacant portion of the building as determined by the vacancy and collection rate. He testified this tax load comes to .69% which is then applied to the capitalization rate for a loaded rate of 9.50%. Applying this loaded rate to the subject's net operating income results in an estimate of market value for the subject under the income approach of \$5,800,000, rounded.

The final method developed was the sales comparison approach. MaRous described each of the six sales. The properties range in building size from 96,165 to 124,265 square feet and sold from July 2003 to August 2007 for prices ranging from \$3,550,000 to \$7,900,000, or from \$36.88 to \$68.98 per square foot of building area, including land. The properties ranged in age from 10 to 28 years and in land to building ratio from 2.64:1 to 7.98:1. MaRous described the traffic counts for each comparable. He testified sale #3 was leased at the time of sale. He testified he did not review the lease for this property. MaRous opined that sale #6 was in an inferior location compared to the subject even though it is located near Mannheim. He testified he made adjustment to the comparables for pertinent factors to estimate a value for the subject under the sales comparison approach between \$50.00 and \$55.00 per square foot of building area while the appraisal indicates a value from \$54.00 to \$56.00 per square foot. The final value under the sale comparison approach is \$5,900,000, rounded.

In reconciling the approaches, MaRous testified he gave most reliance to the sales comparison approach which was supported by the other two approaches for a market value for the subject property as of January 1, 2007 at \$5,900,000.

Under cross-examination by the appellant, MaRous acknowledged that, based on his land value, the subject building may be at or near the end of its useful life.

MaRous testified 5 out of the 10 rental comparables lease the whole building, two of the comparables are free standing buildings, four are located outside Cook County, and six are actual rents and not asking rents. He testified that of the six rental comparables that are located within Cook County only two have rental rates above \$5.00 per square foot of rentable area. MaRous testified that rental #7 is similar in age to the subject and the others are newer. MaRous testified that one Cook County rental comparable was leased or offered for lease at or above the rate that he estimated for the subject.

As to the capitalization rate, MaRous testified he used sales #2 and #6 to develop the rate from the market. He acknowledged that these rates were based upon leased fee sales and that the *Korpacz* survey also developed a leased fee capitalization rate. He testified the appraisal does not indicate any adjustments to these rates from leased fee to fee simple rates, but opined this adjustment would be downward in consideration of the safety of that lease.

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MaRous testified as to why he did not include entrepreneurial profit in the cost approach and how he arrived at this vacancy and collection rate in the income approach.

As to the sales comparables, MaRous acknowledged that three of the six comparables are leased fee sales with sale #4 being questionable as to whether it is leased fee or fee simple. MaRous opined it was bought as a fee simple for \$37.00 per square foot of building area. He testified he did not include an adjustment grid, but that he did discuss each comparable within the appraisal. MaRous testified he was aware of the lease information on two of the leased fee properties.

MaRous testified that in a strong market, many times there are not enough fee simple properties to use as comparables for developing a fee simple value. He opined that if the appraiser considers the lease comparable to market rates, then the leased fee sale is reasonable.

MaRous testified sale #1's improvement was divided up after the sale and became multi-tenant. He acknowledged this building was not freestanding. He acknowledged that sale #2 was possibly a buyout of the lease. He was unaware of any 1031 exchanges involved in any of the sales.

In rebuttal, the appellant called Mr. Joseph M. Ryan. Ryan testified he is president of LaSalle Appraisal Group and has been there since 1991. He testified he is an Illinois state certified general real estate appraiser and holds the MAI designation from the Appraisal Institute. Ryan has been an appraiser for over 30 years. He testified he has qualified as an expert witness before tax boards or tribunals in Illinois and Michigan and courts in Illinois and Wisconsin. He testified he has performed between 15 and 20 appraisal reviews and that he has appraised over 200 single-tenant, big box type buildings. Ryan was accepted as an expert witness on appraisal review without objection from the remaining parties.

Ryan testified he reviewed the appraisal report prepared by MaRous to ascertain whether MaRous followed proper methodology and techniques in the appraisal. Ryan opined the data was inadequate and improperly used to ascertain a value for the fee simple market value of the subject.

As to the cost approach, Ryan testified land sales #1, #2, and #3 were significantly smaller than the subject and had a different highest and best use. He testified land sale #1 was developed with a four-unit retail building, land sale #2 was developed with a hotel, and land sale #3 was developed with a bank. He testified that the two land sales that had adequate size to build the subject, sales #4 and #5, sold for \$7.00 and \$7.32 per square foot of land area. He opined that MaRous concluded his land value at \$12.00 per square foot based on the much smaller land sales and that the estimated value was too high.

Ryan testified that the appraisal did not contain much detail on how MaRous arrived at a \$60.00 per square foot of building area cost new figure, but he agreed with MaRous' conclusion that this approach did not have much weight in the final conclusion of value. Ryan opined that using the same cost price per square foot for the subject and the sales comparables indicates the properties are exactly the same, but they are not the same.

In the income approach to value, Ryan testified as to each rental comparable used by MaRous. Ryan testified most of these rental comparables are newer than the subject and that four are

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located in DuPage County. He opined that the appraisal failed to analyze the effect of the lower effective taxes in this county compared to the subject. In reviewing the Cook County rentals, Ryan testified these properties have rental or asking rates from \$4.00 to \$8.50 per square foot of rentable area and that these buildings were newer than the subject. He opined that reviewing the Cook County data should not result in a \$6.50 per square foot of building area rental value for the subject as MaRous did.

Ryan opined that the capitalization rate used by MaRous was too low. He testified that the appraisal incorrectly identified the buyer of sale #2 and the actual buyer was Walmart who was currently leasing the property. He testified that Walmart was buying out their lease on the property and opined that the capitalization rate from this sale is irrelevant. He testified that the two sales used to develop MaRous' direct market capitalization rate were newer than the subject. He opined that the analysis and data within the income approach was inadequate.

As to the sales comparison approach, Ryan testified sale #1 was not a freestanding building and was much newer than the subject. Ryan reconfirmed that sale #2 was purchased by Walmart and not Marcus & Millichap as indicated in the appraisal. Sale #3, Ryan testified was a 10 year old property that was not the property described in the appraisal. He testified that the square footage of this building was 185,000 which would reflect a unit sale price of \$42.42 per square foot of building area.

Ryan testified sale #4 consists of two buildings, a freestanding Kmart with 85,680 square feet of building area and a five-unit retail building with 13,872 square feet of building area. He testified sale #5 was a leased fee sale. Ryan testified sale #6, which is similar in size to the subject, but 12 years newer, sold for \$36.88 per square foot of building area. He testified that there was five years left on the lease at the time of purchase and the tenant was unsure at that time if they would stay. Ryan opined that the opinion of value in the sales comparison approach was too high.

Under cross-examination by the board of review, Ryan testified that MaRous' first three land sales were smaller in size than the subject's land and had different highest and best uses. He testified the other two land sales were developed with big box stores and had land prices of \$7.00 and \$7.32 per square foot. He testified comparability in size is one factor that is used in choosing comparables. He testified that a property that contains 2,000,000 square feet of land may not be comparable to the subject. He opined that, generally, the price per square foot decreases the higher the square footage of a property.

Ryan acknowledged the subject is located in a decent commercial area that was very marketable. He testified there is some vacant land located around the subject, but not a great deal. He opined that the subject's land would be more valuable, in general, than land in Harvey.

In the sales comparison approach, Ryan testified the age is an element of comparison that should be considered. He testified that less of an adjustment for age would be needed if the comparable was only one-year newer or older than the subject.

Under cross-examination by the intervenors, Ryan testified that MaRous' conclusion of land value was too high. He opined he did not conclude an opinion of value by making this statement. He opined that a land sale that was developed with a bank is a different highest and best use than

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the subject. He agreed that land that was developed with a school has a different highest and best use than the subject. He testified he may use a site that did not have municipal services like the subject does, but he would try not to use it.

Ryan testified that he did not look at the traffic counts of the subject and comparables and that the appraisal does not address traffic counts. He testified that comparables that are closer to the subject, all other things being equal, are preferable.

Ryan opined that an appraisal should contain an analysis of rental comparables used in the appraisal. He testified that a market derived capitalization rate is the best source for information in terms of what the market is doing when the information is correct and available. He also testified that it is a consideration when choosing comparables to look at the population and household income of the area.

On redirect, Ryan opined that retail sales can be better in less desirable areas than higher populated areas depending on the product that is being sold.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the PTAB concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property, the PTAB examined the appellant's and intervenors' appraisal reports and testimony, the board of review's submission, and the appellant's rebuttal documentation and testimony.

The PTAB finds the board of review's witness was not present or called as a witness to testify about their qualifications, identify their work, testify about the contents of the evidence, the conclusions or be cross-examined by the appellant, intervenors and the Property Tax Appeal Board. Without the ability to observe the demeanor of this individual during the course of testimony, the Property Tax Appeal Board gives the evidence from the board of review no weight.

The PTAB then reviewed the two appraisals and the testimony regarding these appraisals to determine the best evidence of the subject's market value.

In the cost approach, the PTAB finds both appraisers used land sales that were developed with buildings that had different highest and best uses than the subject and, hence, the cost approach is not the most reliable indicator of value. Therefore, this approach was given diminished weight.

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In the income approach, the PTAB finds both appraisers used rental comparables that were located outside Cook County and have different tax structures that would affect the asking and actual rates. Therefore, the PTAB finds both appraisers had flawed income approaches and the income approach is not a reliable indicator of value.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2<sup>nd</sup> Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5<sup>th</sup> Dist. 1989). In addition, both appraisers gave the greatest consideration to the sales comparison approach when concluding a final value for the subject. Therefore, the PTAB will give this approach the most weight.

The PTAB finds MaRous' sale comparables #3 and #5 are leased fee properties and sold with differing property rights than the subject. In addition, the PTAB finds MaRous' sale comparable #2 was leased at the time of sale and this tenant exercised their option to purchase the subject, essentially buying out the lease which is also a different property right than the fee simple right used for the subject. Therefore, the PTAB gives these comparables diminished weight.

As to McCormick's sales comparables, the PTAB gives diminished weight to sale #1 as this property had a different highest and best use as the subject; #2, which was used by MaRous, as this sale was the exercise of an option by the tenant to purchase the property; and #8 as this sale was leased at the time of sale and had a different property right than the fee simple used to value the subject.

The remaining sales were given significant weight by the PTAB and have unadjusted sales prices ranging from \$13.00 to \$52.54 per square foot of building area, including land. The subject property's assessed value equates to a market value of \$54.00 per square foot of building area, including land, which is above the unadjusted range of the comparables. The PTAB also finds that when the lowest and highest unit values are removed, a very small range of \$36.67 to \$49.91 per square foot of building area is created. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary to the unadjusted sales values, the PTAB finds that the subject property had a market value of \$45.00 per square foot of building area, including land, or \$4,830,000, rounded. Since market value has been determined, the Cook County Real Property Assessment Classification Ordinance level of assessments of 38% for Class 5A commercial property shall apply and a reduction is warranted.

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<b>APPELLANT:</b>	<u>Lumanair, Inc.</u>
<b>DOCKET NUMBER:</b>	<u>08-04938.001-C-2 thru 08-04938.006-C-2</u>
<b>DATE DECIDED:</b>	<u>May, 2013</u>
<b>COUNTY:</b>	<u>Kane</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject matter of this appeal involves six parcels at the Aurora Municipal Airport located at Route 30, Sugar Grove, Sugar Grove Township, Kane County. The property identified by property index number (PIN) 14-17-300-034 is improved with a two-story building constructed in 1987 with 15,600 square feet of building area. The remaining PINs are improved with one-story hangars that range in size from 6,318 to 39,000 square feet of building area.

The appellant appeared before the Property Tax Appeal Board by counsel contending overvaluation with respect to the leasehold value as the basis of the appeal. The first witness called on behalf of the appellant was Mike Luman, vice president, general manager and partial owner of Lumanair, Inc. (hereinafter Lumanair). The witness testified Lumanair is located at the Aurora Municipal Airport in Sugar Grove and is known as a fixed base operator (FBO). A FBO provides such services to the general aviation community as fuel, maintenance, hangar storage, flight training, and aircraft rental.

Luman testified Lumanair has been at the Aurora Municipal Airport since 1966 and leases its facilities from the City of Aurora. He explained that the lease has been extended from time to time with the latest being a 20 year lease with a 10-year option entered in 1999. Luman agreed that the lease would expire on February 28, 2019.

Luman explained the lease consists of eight parcels, six of which are occupied by buildings. There are five hangar buildings and one office building although within the confines of the hangars there is some office space. The hangars are used for either the storage of clients' aircraft or Lumanair's usage for line operations and aircraft maintenance facilities. The offices are generally for corporate use and/or rental to other tenants. Luman testified the six buildings were present when the existing lease was entered into in 1999.

The next witness called on behalf of the appellant was Ralph W. Harkison. Harkison is a State of Illinois Certified General Real Estate Appraiser. He is self-employed with Harkison Appraisal Corporation, Big Rock, Illinois. The witness identified Appellant's Exhibit #1 as the appraisal of the subject property that he prepared. Harkison estimated the leasehold value of the subject property to be approximately \$668,000.

The appraiser testified his assignment was to value the leasehold interest of the lease between Lumanair and the City of Aurora. He testified there is one lease between Lumanair and the City of Aurora, which he reviewed and included in the addenda of his appraisal. Harkison explained that in valuing each parcel he used the monthly rent for the remaining term of the lease, which was 134 months, and applied a discount rate of 8.5% resulting in a present value factor of 86.35.

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The witness also explained that for PIN 14-17-300-034 he added a percentage rent due to the fact the lease includes rent based on 1.5% of gross sales.<sup>1</sup>

With respect to the buildings, Harkison testified they remain on the property until the end of the lease and there is no provision that the buildings remain the personal property of the tenant. The appraiser testified that he considered the buildings as part of the lease and testified that all but one of the buildings was built by Lumanair. He also explained that at the end of the lease all building improvements are not to be removed.<sup>2</sup> The appraiser testified the highest and best use of the property was as improved with facilities to provide space for airport functions of business.

The appraiser testified he valued the leasehold interest because the property is owned by the City of Aurora, a tax exempt government body. He testified that when a tax exempt body owns property that is leased to one not exempt the leasehold interest becomes taxable to the tenant. In determining the leasehold value the witness testified he followed the formula set forth in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568 (1968). He explained that the factors that need to be considered in arriving at the leasehold value include market rent, the remaining term of the lease and the discount factor which is based on the quality of the rent, the character and credit of the person paying the rent.

Harkison testified that on the date of value there were 134 months remaining on the lease. The appraiser examined the quality of the rent and felt the proper rate of return or discount rate was 8.5%. He then looked at the rent provided by his client, chose a level rent, and discounted the rent back to present dollars using the discount rate of 8.5%.

The witness agreed that American Airlines required the use of market rent not contract rent in developing the leasehold value. Ultimately the appraiser determined the subject's actual rent was market rent. This was done by reviewing comparable leases involving a tax exempt body leasing to a taxable entity. His report included three lease comparables located at the Quad City International Airport, Peoria International Airport and the Chicago Executive Airport also known as Pal-Waukee Airport. The Quad City International Airport had rental rates ranging from \$.11 to \$.30 per square foot of ground area with lengths ranging from 20 and 30 years. Peoria International Airport had rates of \$.30 per square foot of land area in 2006 and 2007. He indicated that at the Chicago Executive Airport the FBO had a land lease rate of \$.590032 per square foot for 40 years, which is subject to CPI adjustments each year. He further testified that after preparing the report he had a return call from DeKalb Airport and their leases are at \$.22 per square foot of land area. Harkison testified the subject has a lease rate of \$.34537 per square foot of ground area and an additional rent based upon 1.5% of gross sales. He also testified that in checking with other leases at the Aurora Municipal Airport the lease rates are the same.

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<sup>1</sup> Paragraph 2 of the lease described the Ground Rent that was to be paid to the City of Aurora. Paragraph 3 of the lease described the Additional Rent that was to be paid to the City of Aurora for the leased premises as an amount equal to 1.5% of the gross receipts generated by Lumanair's business conducted on the leased premises. Gross receipts were defined as all cash generated from the business activities conducted on the leased premises by Lumanair, plus deductions for State and/or Federal excise/sales taxes.

<sup>2</sup> Paragraph 8(b) of the lease provides in part that, "At the termination of the Lease or of any extension or renewal thereof, Tenant shall surrender the leased premises, including all building and site improvements constructed or installed by the Tenant, in good condition . . . All such buildings and improvements shall become the sole property of the Landlord upon termination of the Lease. . . ."

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The witness testified he began valuing leaseholds in approximately 1982 at Aurora Airport and other airports using the same methods as in the appraisal. The witness indicated his valuation was presented in a prior objection by Lumanair to the board of review and the assessor and was accepted. He further testified that he had continued to calculate the value of Lumanair's leases with the City of Aurora for the purpose of arriving at appropriate assessed values in subsequent years. Harkison indicated the assessor had accepted his values until the current year.

In the addenda of the appraisal Harkison also included a copy of a tax bill disclosing the tax was based on a leasehold interest, a copy of instructions from the Kane County Supervisor of Assessments setting forth the methodology of assessing leaseholds and a copy of the opinion of the court issued in Korzen v. American Airlines, Inc., 39 Ill.2d 11, 233 N.E.2d 568 (1968).

Under cross-examination Harkison testified Luman has the authority to sublease the space at a number considerably higher than what the current ground rent is. Harkison also explained that the subject's lease quotes a ground rent of \$.027691 per square foot, however, the lease is dated February 23, 1999, and has an annual cost of living adjustment resulting in the estimated rent of approximately \$.34 per square foot. He further testified that there is no separate lease for the building area and the \$.34 per square foot includes the building component. He testified that one of the hangars was built prior to being occupied by Lumanair and the rent is the same as the rest of the property.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of each of the PINs was disclosed. The subject PINs had a total assessment of \$421,775. The total assessment reflects a market value of \$1,267,733 when applying the 2008 three year average median level of assessments for Kane County of 33.27%.

In a letter submitted to the Property Tax Appeal Board, board of review member Timothy J. Sullivan asserted that it was their position that the appellant's appraiser had misinterpreted American Airlines in that he addressed strictly the value of the land component of the property and does not include the building improvements of the hangars. He indicated the methodology employed by the appraiser may be correct but the interest appraised was not.

At the hearing the board of review called as its witness Ed Kling. Kling testified he had worked as a deputy assessor for four townships in DuPage County when he started his career 20 years ago. He testified he does consulting work for York Township, work for the Will County supervisor of assessments office and work in Kane County for various assessment offices. He further testified he is an MAI (Member of the Appraisal Institute) appraiser. He also testified that he has done a lot of airport evaluation for fee-simple type transfers and for leasehold purposes at DuPage, Lake-in-the-Hills, DeKalb and Aurora.

The witness further explained he has developed approximately 15,000 square feet of hangars in the last five year. He also testified he has a hangar in DeKalb that he just negotiated a fair leasehold assessment on.

Kling testified he agreed with the methodology employed by Harkison in terms of establishing the market rent and then discounting the rent over the period. However, it was Kling's opinion

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that in developing market rent you look at the building improvement. Kling testified he looked up rental rates for competing hangars from the market area. The valuation analysis prepared by Kling for each PIN was submitted by the board of review and each contained a list of 14 comparable rentals from DeKalb Taylor Municipal Airport, Aurora Municipal Airport, DuPage County Airport and Rockford. These properties were reported to have hangars renting for \$2.75 to \$10.40 per square foot of building area. Kling testified after using these comparables he arrived at a fair market rent of \$5.00 per square foot for all the improvements on the site. He further stated that he agreed with Harkison's used of an 8.5% discount rate.

Kling further testified that he used a four year term in his calculations rather than the unexpired term of Luminair's lease in arriving at his conclusion of value. He thought it would be very onerous if somebody's got a brand new 40-year term lease if you apply the formula to the letter of how it is written. He testified they were going to make an assumption that everybody had a uniform lease length on their hangars at Aurora Airport. He asserted once they established what the uniform lease period might be they went and looked at all the hangar stock to derive market rents.

The board of review representative asked Kling if he was familiar with the case of Rosewell v. Bulk Terminals Co., 73 Ill.App.3d 225 390 N.E.2d 1294, 28 Ill.Dec.704 (1<sup>st</sup> Dist. 1979) and he indicated that his understanding of the opinion was that the market rent of the improvements is to be used. Meaning the market rent of the hangars was to be used in the American Airlines formula.

Kling arrived at the following values for the respective PINs under appeal rounded to the nearest dollar:

Property Index Number	Value
14-17-300-034	\$305,324
14-17-300-017	\$148,845
14-17-300-015	\$77,257
14-17-300-016	\$148,845
14-17-300-014	\$78,149
<u>14-17-300-028</u>	<u>\$524,582</u>
Total	\$1,283,002

Under cross-examination Kling testified that he agreed with Harkinson that the formula used to arrive at the leasehold value was that in the American Airlines decision. He further testified he did not use the term of Lumanair's lease stating to do so would be onerous. He indicated the four year term in his analysis was the methodology chosen by the assessor's office for uniformity purposes.

During the course of his cross-examination Kling testified that the City of Aurora was the landlord with respect to the ground. He asserted that the City of Aurora was leasing the underlying ground to Mr. Luman (Lumanair).

Kling explained that Lumanair leases the hangars to the general public and some of the rates they charge were similar to the rates cited in his analysis. He explained his rent of \$5.00 per square

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foot is what someone could rent the hangars for from the owners. The witness asserted the rental rates in his report are the market rental rates for aircraft hangars in competition with the subject property.

Kling identified Board of Review Group Exhibit #1 as containing the reports he prepared in valuing the subject property. He further indicated that he used the same rental comparables in valuing the whole property and asserted he used a market rent of \$5.00 per square foot of hangar building area. However, in reviewing his respective valuations, Kling used rental rates for PINs 14-17-300-014 & 015 of \$5.00, \$5.10 \$5.20 and \$5.30 per square foot of building area for 2007, 2008, 2009 to 2010, respectively; for PINS 14-17-300-016, 017 & 034 he used rental rates of \$8.00, \$8.16, \$8.32 and \$8.48 per square foot of building area for 2007, 2008, 2009 to 2010, respectively; and for PIN 14-17-300-028 he used rental rates of \$5.50, \$5.61, \$5.72 and \$5.83 per square foot of building area for 2007, 2008, 2009 to 2010, respectively. He indicated that he made adjustments to the rentals because of office area in the various hangars, however, nowhere in his analysis of the respective PINs is that stated.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant in this appeal is challenging the fair cash value of the leasehold interest in the property. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Additionally, the Property Tax Code provides that each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value. 35 ILCS 200/9-145(b)). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038, 780 N.E.2d 691, 269 Ill.Dec. 219 (3<sup>rd</sup> Dist. 2002); 86 Ill.Admin.Code §1910.63(e). The Board finds the appellant met this burden of proof and a reduction in the subject's assessment is warranted.

The Board finds there was no dispute that the subject property should be assessed as a leasehold. The parties did not dispute that the subject property was owned by the City of Aurora and was exempt but leased to Lumanair creating a taxable leasehold. Section 9-195 of the Property Tax Code provides in part that:

- (a) Except as provided in Section 15-35, 15-55, 15-100, and 15-103, when property is exempt from taxation is leased to another whose property is not exempt, and the leasing of which does not make the property taxable, the leasehold estate and appurtenances shall be listed as the property of the lessee, thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as on property that is not exempt, and the lessee shall be liable for those taxes. However, no tax lien shall attach to the exempt real estate. . . .

35 ILCS 200/9-195. The fair cash value of a leasehold is its rental value in the market, the amount a willing lessee will pay a willing lessor, in a voluntary transaction, for the right to use

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and occupy the premises. Korzen v. American Airlines, Inc., 39 Ill.2d.11, 18, 233 N.E.2d 568, 572 (1968). The Supreme Court of Illinois in American Airlines set forth the mathematical formula to be used in calculating the value of a leasehold for real estate assessment purposes by stating that:

The present value of the current market rental payable in the future, which is the fair cash value of the leasehold, can be determined by multiplying the current market rental of a leasehold by the present value of an annual payment of one dollar for the unexpired term of the lease.

American Airlines, 39 Ill.2d at 19, 233 N.E.2d at 573. Furthermore, the court in Rosewell v. Bulk Terminals Co., 73 Ill.App.3d 225, 237, 390 N.E.2d 1294, 28 Ill.Dec.704 (1<sup>st</sup> Dist. 1979) stated it is the market rental for the land as improved, rather than the contractual rental or the market rental for unimproved land, that is the appropriate basis for computing the fair cash value of the leasehold.

Both Harkison and Kling testified the formula announced in American Airlines was to be used in valuing the subject leasehold. Of the two witnesses the Board finds that Harkison was more credible than Kling in that he most closely followed the dictates of American Airlines in arriving at the leasehold value.

First, the Board finds Harkison included a copy of the subject's lease in his appraisal disclosing the lease terminated on February 28, 2019. Harkison calculated the leasehold value using the unexpired term of the lease or 134 months. Conversely, Kling estimated the subject's leasehold value using a hypothetical term of four years beginning in 2007 and expiring in 2010. Kling's use of a hypothetical lease term is not supported by the holding of American Airlines. The Board finds that Harkison's conclusion with respect to the unexpired term of the lease and the use of the remaining 134 months of the lease term in calculating the leasehold value is more credible and consistent with the holding of American Airlines.

Second, Harkison testified he canvassed other airports to determine the market rent for ground rents and also included an additional rent based on 1.5% of gross sales as provided in the subject's lease. He testified that the subject's rental was reflective of the market based on his research of other airports and with other tenants within the Aurora Municipal Airport. Kling testified during the hearing he utilized a market rent of \$5.00 per square foot of building area; however, in reviewing his analysis and during cross-examination it was revealed he used different rates for different hangars for each of the 4 years of his hypothetical lease term. The Board finds the fact that his testimony was inconsistent with the report he prepared for each PIN undermines his credibility. Furthermore, Kling testified that the subject's lease was for the ground. However, a review of the lease disclosed it was for the entire premises, which included the improvements, and had both a ground rent component and an additional element based on a percentage of gross sales generated by Lumanair's business as an FBO. Mr. Luman testified that as an FBO Lumanair provided services and presumably received revenue from such sources as fuel, maintenance, hangar storage, flight training, and aircraft rental. Luman also testified the six hangars were present when the current leased was entered into in 1999. Based on this record it appears the subject's rental under the lease was more than just for the ground but included a factor derived from the rental of hangar space or the building improvements. The Board finds

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that Kling's testimony with respect to his understanding of the subject's lease detracts from his credibility and his selection of the market rent attributable to the subject property. In conclusion the Board finds that Harkison's conclusion of market rent is more credible.

Third, The Board finds that both Harkison and Kling were in agreement with respect to the discount factor of 8.5% to be used to calculate the present value of the current market rental payable in the future.

Based on this record the Board finds that Harkison's conclusion of the subject's leasehold value is more credible and a reduction in the subject's assessment is justified.

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<b>APPELLANT:</b>	<u>Mohammed Masud</u>
<b>DOCKET NUMBER:</b>	<u>06-26514.001-C-1</u>
<b>DATE DECIDED:</b>	<u>April, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of 3,125 square feet of land that is improved with a 47-year old, one-story, masonry, commercial building used as an owner-occupied, storefront restaurant. The appellant, via counsel, argued that the subject's market value was not accurately reflected in its assessment.

In support of the market value argument, the appellant submitted an appraisal summary report undertaken by Robert A. Napoli of Allied Appraisal Company in Chicago, Illinois. The report states that Napoli is a licensed State of Illinois Certified Real Estate Appraiser. The appraisal indicated that the subject had an estimated market value of \$151,000 as of January 1, 2006. The appraisal report indicated that pursuant to a prior agreement with the appraiser's client, the appraiser utilized only the income approach to value to estimate the market value for the subject property. The appraisal states that an inspection of the subject was conducted on March 23, 2007, while the date of this report was March 24, 2007. The subject's highest and best use as improved is its current use, while its highest and best use as vacant was for an assemblage with adjoining parcels because of its long narrow shape and small land area. As to the three traditional approaches to value, the appraisal indicated that the cost approach and the sales comparison approach were inapplicable to the subject property without further elaboration.

Under the income approach to value, the appraiser analyzed the rents of four suggested comparable commercial buildings, which were identified as eight commercial leases for either retail, office, or restaurant space. They ranged in leased area from 900 to 3,600 square feet and in rental rates from \$13.30 to \$18.63 per square foot on a gross basis. After making adjustments, the appraiser estimated a unit rental for the subject at \$16.00 per square foot. Therefore, gross income was estimated at \$34,400, while a 5% vacancy and collection loss was deducted resulting in an effective gross income of \$32,680. Expenses were estimated at 25% resulting in a net income of \$24,510. A loaded capitalization rate of 16.21% was utilized to estimate a value under the income approach of \$151,000, rounded.

Thus, the appraiser concluded that the subject's appraised value was \$151,000 as of January 1, 2006. Based on this evidence, the appellant requested a reduction in the subject's assessment.

At hearing, the appellant's attorney asserted that the subject's assessment had doubled from the prior tax year and that the income approach to value is valid to show income production of a property.

The Cook County Board of Review submitted its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$107,191 was disclosed. This assessment yields a market value of \$282,082 when the Cook County Classification Ordinance level of assessment for commercial property of 38% is applied.

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In support of the subject's assessment, the board of review submitted printouts of raw sales data relating to six properties identified as either retail storefront or retail restaurant locations. The improvements are one-story, masonry, commercial buildings that ranged in size from 2,200 to 2,860 square feet of building area. They sold from August 1998, through January 2005, for prices that ranged from \$136.96 to \$256.25 per square foot. The printouts indicated that sales #1, #2, #4 and #5 did not include representation by real estate brokers for the parties to each sale, while sale #6 was a leased fee purchase. Based on this evidence, the board of review requested confirmation of the subject's assessment.

As to the appellant's case, the board of review's representative argued that the subject property is an owner-occupied commercial enterprise and as such, the income approach to value is less applicable. Moreover, he asserted that the appellant failed to provide the appraiser to testify regarding the submitted appraisal.

In rebuttal, the appellant re-affirmed the evidence previously submitted while asserting that the county assessor's office will look at income data in determining a property's assessment.

After hearing the arguments and considering the evidence, the Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's-length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code. § 1910.65(c). Having considered the evidence presented, the Board finds that a reduction is not warranted.

The Board gives little weight to the appellant's appraisal. This appraisal did not include any market sales or justify why sales were not included within the analysis. The court has held that "[w]here the correctness of the assessment turns on market value and there is evidence of a market for the subject property, a taxpayer's submission that excludes the sales comparison approach in assessing market value is insufficient as a matter of law." Cook Cnty. Bd. of Review v. Ill. Prop. Tax Appeal Bd., 384 Ill. App. 3d 472 at 484 (1st Dist. 2008). The Illinois Appellate Court recently revisited this issue in Bd. of Educ. of Ridgeland Sch. Dist. No. 122, Cook Cnty. v. Prop. Tax Appeal Bd., 2012 IL App. (1st) 110,461 (the "Sears" case). In Sears, the court stated that, while the use of only one valuation method in an appraisal is not inadequate as a matter of law, the evidence must support such a practice and the appraiser must explain why the excluded valuation methods were not used in the appraisal for the Board to use such an appraisal. *Id.* at ¶ 29.

In this case, the appraisal provided no plausible reasons for excluding these valuation methods, and the evidence does not show that their exclusion is standard practice when appraising

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property that is similar to the subject, most especially because the board of review located sale comparables for the subject property. Moreover, the appellant's appraiser was not called to provide testimony regarding the exclusion of such market sales. Therefore, the Board finds that reliance on the appellant's appraisal would be deficient as a matter of law, and, thus, no reduction is warranted based on the appellant's market value argument.

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<b>APPELLANT:</b>	<u>Moran Canyon LLC</u>
<b>DOCKET NUMBER:</b>	<u>09-04747.001-C-3 and 10-01971.001-C-3</u>
<b>DATE DECIDED:</b>	<u>October, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of an irregular shaped site that contains a total land area of 771,012 square feet or 17.7 acres that is improved with two, three-story, masonry and frame constructed apartment buildings containing approximately 306,048 square feet of building area. <sup>1</sup> The improvements were constructed in 2002. There are a total of 348 units consisting of one-bedroom with one-bath apartments and two-bedroom with two bathroom units. The one-bedroom units range in size from 700 to 928 square feet of living area. The two-bedroom units range in size from 1,091 to 1,184 square feet of living area. Additional improvements include a clubhouse, garages and a swimming pool. The property is commonly known as the Bristol Station Apartments and is located in Naperville, Naperville Township, DuPage County.

The appellant appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Joseph M. Ryan of LaSalle Appraisal Group, Inc. estimating the subject property had a market value of \$25,600,000 as of January 1, 2009. The appraisal was marked as Appellant's Exhibit #1.

Ryan became involved in the assessment and appraisal field in 1980. He spent five years at the Cook County Assessor's Office and had experience with two appraisal firms between 1985 and 1990. In 1990 he founded LaSalle Appraisal Group, Inc. Ryan has the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute and has the State of Illinois Certified General Real Estate Appraiser license. Most of Ryan's appraisal work has been in the Chicagoland area and he has appraised over 130 apartment buildings since 2001.

The purpose of Ryan's appraisal was to estimate the fee simple market value as of January 1, 2009 for ad valorem taxation purposes. Ryan testified that the events of October 2008 had affected the apartment market by the fact that financing became more difficult to obtain. He testified the collateral mortgage backed security option for financing larger properties was no longer available requiring owners or buyers of property to have higher equity stakes when buying property. The witness also testified rents had been declining and capitalization rates had been increasing creating a situation where property values decreased.

Ryan determined the highest and best use of the property both as vacant and as improved was for the continuation as an apartment property. The appellant's appraiser developed the sales comparison approach to value and the income capitalization approach to value in estimating the market value of the subject property.

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<sup>1</sup> A consolidated hearing was held for Docket Nos. 09-04747.001-C-3 and 10-01971.001-C-3. The evidence from the appellant and intervenor was the same in both appeals. However, the DuPage County Board of Review was found to be in default in the appeal for the 2010 tax year due to the failure to submit its "Board of Review Notes on Appeal" and evidence in support of its contention of the correct assessment.

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Ryan utilized six comparable sales in developing the sales comparison approach to value. The comparable sales were located in Aurora, Naperville and Oswego from approximately 1 mile to 11 miles from the subject property. The comparables were constructed from 1980 to 1991 and had from 150 to 352 units. Comparable sales #2, #3, #4 and #5 were described as having total building areas ranging in size from 108,420 to 276,240 square feet of building area. The comparables had sites ranging in size from 342,382 to 912,146 square foot of land area. Comparable sales #1, #2, #5 and #6 had a mix of one-bedroom and two-bedroom apartments. Comparable sales #3 and #4 had mix of one-bedroom, two-bedroom and three-bedroom apartments. Comparables #1, #2, #4, #5 and #6 were described as being improved with two-story buildings. The sales occurred from June 2006 to October 2009 for prices ranging from \$8,150,000 to \$33,500,000 or from \$54,333 to \$115,079 per unit.

At page 31 of his report Ryan asserted the sales that occurred prior to the economic downturn in 2008 do not reflect the current market. He testified that according to federal statistics the economy entered a recession in 2007 and the most dramatic event of that was the stock market collapse in October 2008. Ryan testified the banking crisis changed how the world operated. He asserted that financing dried up for big projects, banks had higher equity requirements, there were stricter lending requirements, rents were going down and overall capitalization rates were going up. He testified only his comparable sales #5 and #6 reflected those conditions. Ryan asserted the remaining sales occurred in a different economic time and required substantial downward adjustments for market conditions.

In analyzing the sales, the appraiser indicated in the report there were no adjustments necessary for financing terms; no adjustments were necessary for condition of sale as all were "arm's-length" transactions; downward adjustments were made to sales #1 through #4 for market conditions, an upward adjustment was made to sale #4 due to its location in Oswego, Kendall County; no adjustment was made for age and condition; sales #3 through #5 were adjusted downward due to the smaller number of units; and sale #6 was adjusted downward due to the above market occupancy rate of 97%. Based on this analysis the appraiser estimated the subject property had a market value of \$73,500 per unit or \$25,600,000, rounded.

According to Ryan he received income information following the completion of the appraisal that supported his adjustments to sales #5 and #6. This documentation was marked as Appellant's Exhibits #2 and #3. He also compared the incomes on these properties with the subject on a document that was marked as Appellant's Exhibit #4. The intervenor objected to the exhibits as not being submitted to the Property Tax Appeal Board and not being used in the preparation of the report. The Property Tax Appeal Board sustains the objection finding the documents were not timely submitted pursuant to the Sections 1910.30(g) & (k) and Section 1910.67(k) of the rules of the Property Tax Appeal Board (86 Ill.Admin.Code §1910.30(g) & (k) & §1910.67(k)). As such the Property Tax Appeal Board will give this aspect of the appraiser's testimony no weight.

The next approach to value developed by Ryan was the income approach to value. He explained he was estimating the fee simple interest, therefore, under the income approach market rents as of January 1, 2009 have to be used rather than contract rents.

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The appraisal contained information on five comparable rentals improved with apartment complexes located in Aurora and Naperville. The comparables contained from 319 to 420 units. Two of the properties were described as garden type apartment complexes and one was described as a three-story apartment complex. Comparable #2 was constructed in 1999 and comparables #4 and #5 were constructed in 1997. The comparables had one-bedroom apartments had monthly rental rates ranging from \$775 to \$1,330 per month or from \$.93 to \$1.57 per square foot and two-bedroom apartments with monthly rentals ranging from \$869 to \$1,970 or from \$.86 to \$1.41 per square foot. The comparables had occupancy rates of 83%, 85%, 90%, 95% and 98%, respectively. Ryan reported the subject as having an occupancy rate of 92%.

Ryan testified he looked at the rent roll for the subject as of January 1, 2009. He testified the asking rents were lower than the contract rents that were signed sometime during 2008. He asserted the rents in place during 2008 were higher than market rents as of January 1, 2009. According to the appraiser by January 1, 2009 a decision had been made to lower rents to maintain occupancy.

On page 47 of Ryan's appraisal he set forth the unit rental mix at the subject property which disclosed that the one-bedroom/one-bathroom units had current rents ranging from \$795 to \$1,125 or from \$1.00 to \$1.21 per square foot per month and the two-bedroom/two-bathroom units had rents of \$1,099 and \$1,199 or \$1.01 per square foot per month. He further testified that he was made aware of rents at the subject property on January 1, 2009, which are reported on page 56 of the appraisal. The four model one-bedroom/one-bathroom units had monthly rentals of \$825, \$850, \$899 and \$1,125, respectively. The two model two-bedroom/two-bathroom units had month rentals of \$1,099 and \$1,199, respectively. The resulting monthly income was calculated to be \$330,768. The appraiser stated in the report the potential monthly gross income of \$330,768 was taken from the current rent roll. The annual potential gross income was calculated to be \$3,969,216 ( $\$330,768 \times 12$ ).

The appraiser next estimated the subject's vacancy and collection loss. In the apartment overview section of the appraisal Ryan reported that the national vacancy rate rose to 7.5%; the overall vacancy rate in Chicago was 6.6% and in the suburbs the vacancy was 6.8%. Ryan stabilized vacancy at 7.0% and added .5% for collection loss resulting vacancy and collection loss deduction of \$297,691 and a gross income of \$3,671,525.

Ryan then explained that management charges tenants per month for trash collection and water and sewer usage, which he stabilized at \$65,000. The appraiser also stabilized other income from categories such as pet rental income, parking revenue, apartment damages and termination and application fees to be \$200,000. Adding these components resulted in an effective gross income of \$3,936,525. Ryan testified this amount is less than contract rent because the rents in place in 2008 were higher than the asking rents as of January 1, 2009. The appraiser asserted this would be consistent with the fee-simple interest he was appraising.

The appraiser then calculated operating expenses for common area utilities, management, administration, cleaning, maintenance and repairs, insurance, marketing, professional fees, payroll and reserves. The appraiser included a table of the subject's operating statements for 2007 and 2008 which reflect operating expense ratios (calculated by dividing the operating expenses by the total revenue) of 40.43% and 41.30%, respectively. The report also had the

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typical operating expenses for the Chicago apartment market according to the "2009 IREM Income/Expense Analysis; Conventional Apartments" published by the Institute of Real Estate Management (IREM).

Ryan testified that utilities were trending up and were stabilized at \$575 per unit or \$200,000 compared to the IREM median expense of \$694 per unit. Marketing expense was stabilized at \$160,000 or \$460 per unit. Professional fees were stabilized at \$35,000 or \$101 per unit. Payroll was stabilized at \$365,000 or \$1,049 per unit, which was in line with historical records but above the IREM median expense of \$848 per unit. Management fees were stabilized at \$130,000 or \$374 per unit which was slightly higher than historical range from \$352 to \$365 per unit but below the IREM median management fee for 2007 of \$547 per unit. Maintenance and repair were stabilized at \$195,000 or \$560 per unit which was below the IREM median maintenance and repair expense of \$563 per unit. Expenses associated with apartment turnover such as cleaning and painting were stabilized at \$287 per unit or \$100,000. Insurance expenses were stabilized at \$115,000 or \$330 per unit which was above the historic range and above the IREM expense of \$310 per unit. Other or miscellaneous expenses were stabilized at \$1.44 per unit or \$500. Administrative and general expenses for such expenses as bank charges, telephone, office supplies and computer expenses were stabilized at \$330 per unit or \$135,000. The historic administrative and general expenses were \$152 and \$160 per unit in 2008 and 2007, respectively, and the IREM expenses were \$330 per unit. The replacement reserves for building components were stabilized at \$374 per unit or \$130,000, compared to historical expenses that ranged from \$150 to \$400 per unit. Stabilized expenses totaled \$1,565,500 or 39.77% of effective gross income. Excluding reserves for replacements the operating expenses were approximately 36% of effective gross income. Deducting the expenses from the effective gross income resulted in a net operating income of \$2,371,025.

The final step under the income approach was to estimate the capitalization rate to be applied to the net income. Ryan considered both the direct capitalization technique and the band of investment technique. Using the direct capitalization technique the appraiser used a published survey that derived a capitalization rate from recent sales of properties. Ryan testified that Realtyrates.com, an investment survey of different types of properties, reported capitalization rates in the second quarter of 2009 between 4.7% and 12.2%. He selected a capitalization rate of 7.25%. Under the band of investment technique the appraiser determined the mortgage portion would be 70% with a 6% percent interest rate and a 25 year loan resulting in a mortgage constant of 7.73%. The equity portion was estimated be 30% with an 8.00% interest rate. Using the band of investment technique Ryan calculated a capitalization rate of 7.81%. Ryan indicated in the report that the band of investment method was used to support the direct capitalization technique resulting in an overall capitalization rate of 7.25%. To this the appraiser added a 2% tax load resulting in a loaded capitalization rate of 9.25%. Capitalizing the net income resulted in an estimated value under the income approach of \$25,600,000.

In reconciling the two approaches to value Ryan gave significant consideration to the income approach and secondary consideration to the sales comparison approach and arrived at an estimated value of \$25,600,000 as of January 1, 2009. He testified that market participants tend to look at the market derived overall capitalization rates to make their investment decisions. He asserted that the income approach was given significant weight because basically that is how investors make their decisions.

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It was Ryan's opinion that the value of the property as of January 1, 2010, would not have changed from the value opinion contained in his appraisal. He testified that market rents did not significantly change through January 1, 2010. Ryan's opinion of value for the subject property was the same as of January 1, 2010 as it was for January 1, 2009 of \$25,600,000.

Under cross-examination Ryan testified that vacancy rates in similar complexes increased from 2008 to 2009 while rental rates decreased from 2008 to 2009 and were stable from 2009 to 2010. With respect to the comparable sales, Ryan testified that he determined an adjustment for age was not needed. He testified that there could be an adjustment for age but it is often based on condition and revenue generation.

With respect to the subject's location Ryan stated I-88 is approximately one mile north of the subject property. Additionally, a train station is within walking distance of the subject property. The witness asserted the subject's location was considered in the overall location adjustments in the report. The report disclosed only a positive location adjustment was made to sale #4 for its inferior location in Oswego, Kendall County.

Ryan testified that there is an apartment complex between the subject property and the train station named Railway Station. He indicated this property sold recently but he did not use it because it was much superior overall. He further testified that representatives of the subject property informed him that Railway Station was a property the subject competes with.

Ryan was of the opinion the mortgage crisis had not had an impact on the demand for apartments by January 1, 2009 and January 1, 2010. Ryan agreed that the total revenue of the subject property increased from 2007 to 2008 as depicted on the table on page 59 of his appraisal. He further testified that he based his income projections for the subject property off the price sheet although he stated on page 56 of his report that he used the rent roll. He testified the price listing sheet he examined was dated 12/31/2008 and further agreed a promotion was being run at that time. He further testified that when he looked at the property in November 2009 the price sheet was lower than the 12/31/2008 price sheet. Ryan asserted it would not surprise him if the rental rates being received at the subject property were higher than what he projected because the rents were contracted for in 2008, prior to the rental rates being lowered. The appraiser did not know if the owner of the subject property was projecting to receive less in rental income than in 2008 and asserted he was more interested in market rent than contract rent.

With respect to the table on page 47 of the report, Ryan testified the column identified as "market rent" was the owner's term and that "contract rent" would be a better identifier. He testified this was the contract rent in 2008. The witness testified the column identified as "current rent" was the asking rent as of January 1, 2009, based on the price sheet that they were asking. Ryan asserted the asking rent as of January 1, 2009 was used throughout the year based on information from the leasing manager. He also indicated the promotion was yearlong.

With respect to the rental comparables, Ryan testified that the rents quoted were the rates at the beginning of the year. He agreed the subject property was asking less than other complexes in Naperville.

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With respect to the administrative and general expenses identified on page 61 of the appraisal, Ryan had a math error in that if \$321 per unit is applied, the math results in expenses of \$111,708 not \$135,000 as stated in the report.

In the income approach Ryan concluded the subject had a stabilized operating expense of 36%. He also stated the subject operated at an expense ratio of approximately 40% and 41% for 2007 and 2008, respectively, but that included real estate taxes. Excluding real estate taxes the subject had an expense ratio of just under 30% each year. Ryan agreed that to properly compare his stabilized expenses to the subject's historical expenses real estate taxes should be taken out.

With respect to the comparable sales Ryan testified he performed an exterior inspection of each property. He testified he had information on the average rents for comparables #1, #2, #3, #5 and #6. Ryan testified that one comparable sale had a lower price per unit than his estimated value per unit under the sales comparison approach of \$73,500. The next closest comparable was sale #5 that occurred in October 2009 for a price of \$77,328 per unit.

With respect to the capitalization rate Ryan testified he looked at Realtyrates.com, which is a national survey. He also explained that the return on equity portion of 8% equity in the band of investment approach was also from Realtyrates.com that reported rates ranging from 7.07% to 15.21% during the second quarter of 2009, as stated on page 66 of his appraisal.

With respect to the appeal for the 2009 tax year, the board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property totaling \$10,214,260 was disclosed. The subject's assessment reflects a market value of \$30,710,034 or \$88,248 per unit, including land, when applying the 2009 three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue.

With respect to the appeal for the 2010 tax year, the board of review did not submit its "Board of Review Notes on Appeal" or any evidence in support of the assessment. By letter dated June 8, 2012, the Property Tax Appeal Board found the board of review in default. The appellant had submitted a copy of the Notice of Final Decision issued by the DuPage County Board of Review for the 2010 tax year establishing a total assessment for the subject property of \$9,805,690. The total assessment reflects a market value of \$29,464,213 or \$84,667 per unit when applying the 2010 three year average median level of assessments for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

The board of review presented no witnesses or evidence but deferred to the intervenor.

The intervenor contends the subject property is under-valued. In support of this argument the intervenor submitted an appraisal prepared by Jason A. VanDevelde, Thomas P. Lowery and James A. Gibbons of Gibbons & Sidhu, Ltd. estimating the subject property had a market value of \$36,700,000 as of January 1, 2009. The appraisal was marked as Intervenor's Exhibit #1.

The intervenor called at its witness James A. Gibbons. Gibbons identified Intervenor's Exhibit #1 as the appraisal of the subject property he prepared. Gibbons has the MAI designation and is a State of Illinois Certified General Real Estate Appraiser. Gibbons has had the MAI designation for approximately 25 years.

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Gibbons personally inspected the subject property and described it as being in good condition. He testified the subject property has 348 units with 228 one-bedroom units and 120 two-bedroom units. The complex features a fitness center, a clubhouse with a business center, an outdoor swimming pool and garage parking. The property is located a couple of blocks west of Route 59 and approximately ¼ mile from the Naperville train station.

During the inspection the representatives of the subject property informed him that the two main competitors were the Railway Plaza apartment complex located a couple of blocks south of the subject property and the Grand Reserve of Naperville located approximately two miles southeast of the subject property.

Gibbons testified his research disclosed the subject property sold in September 2005 for a price of \$42,643,000 and included a copy of the Special Warranty Deed in the appraisal documenting the transaction. He testified that the LaSalle Appraisal Report (Appellant's Exhibit #1, pg. 7) indicated the sale was not arm's length but he found no evidence of that.<sup>2</sup>

Gibbons determined the highest and best use of the subject property as improved was for the continued use of the existing improvements as an apartment complex. In estimating the market value of the subject property Gibbons excluded the cost approach to value and used the income and sales comparison approaches to value.

With respect to the income approach Gibbons testified they looked at the historical information of the subject property including actual rentals, gross income from the apartment rentals, historical vacancy rates and historical operating expenses. The appraiser also considered the market for other apartment complexes, vacancy rates in the general area and compared historic operating expenses with general operating statistics and surveys such as IREM. Gibbons stated they used the 2009 income and expense statistics published by IREM. The report included the 2006, 2007 and 2008 income and expense statements of the subject property.

In estimating the market rent the appraiser used four rental comparables located in Naperville. The comparables had from 13 to 34 buildings that were either two or three story and were built from 1991 to 2000. These properties had from 200 to 417 one-bedroom and two-bedroom units. The occupancy rates ranged from 91.0% to 94.5%. Rental comparables #1 and #2 were the properties identified as main competitors of the subject by the subject's representatives according to Gibbons. According to Gibbons these properties had average gross rentals per unit ranging from \$1,089 to \$1,280 per month or from \$1.14 to \$1.28 per square foot. The table on page 37 of Gibbons' appraisal (Intervenor's Exhibit #1) indicated the subject had an average gross rent per unit of \$1,172 per month or \$1.33 per square foot based on market rent as indicated on the rent roll dated 1-25-09.

Gibbons testified he was provided a January 25, 2009, rent roll for the subject property and the 2006, 2007 and 2008 income and expense statements, which were included in the addenda of the

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<sup>2</sup> The LaSalle Appraisal stated, "[T]his sale was not an arm's length sale, since the buyer and seller were the original developers of the property, and the buyers purchased the sellers' share of the property." (Appellant's Exhibit #1, page 8.)

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appraisal. He testified the rent roll showed what is referred to as market rent of \$408,038 per month, which was annualized to be \$4,896,456 (\$408,038/month x 12). He then deducted \$73,176 as "Loss to Lease", which typically means the difference between contract rent and market rent. Gibbons also deducted \$219,615 for concessions based on what was shown on the rent roll as concessions of \$18,301 per month. Vacancy of \$49,677 per month as shown on the rent roll was annualized to be \$596,127 was deducted. Employee rent as reported on the rent roll of \$1,524 per month or \$18,288 annualized was also deducted. Gibbons arrived at a net rental income for the subject of \$4,025,826.

Gibbons summarized the 2006 through 2008 income and expense statements for the subject property on page 38 of his report and stated they reported market rents of \$4,728,840 for 2006, \$4,672,824 for 2007 and \$4,833,648 for 2008. For 2009 the market rent was reported to be \$4,896,456. Gibbons stated the market rent for the subject had gone up from 2006 through 2009. Gibbons testified the rent roll he was given included the individual apartment, name of the tenant if occupied, square footage of the unit, rent, loss to lease and the date of inception of the lease. Gibbons testified that the historical rental revenue information he received from the owner was consistent with what he observed in the market with regard to rental comparables.

Gibbons determined the subject had a gross rent of \$4,896,456. To this amount he added \$225,000 in other income for such items as pet fees, garage parking, utility income and late fees. Gibbons also made a \$73,176 deduction to the income for loss to lease, which is caused when market rent is above the contract rent. Gibbons also made an adjustment of \$391,716 for vacancy. He testified that historical vacancy at the subject property was 6.8% in 2006, 6.5% in 2007 and 8.7% in 2008. He further testified the rent roll as of January 25, 2009 showed a vacancy of 12.2%, which was an aberration in his opinion. The witness explained that Marcus & Millichap reported a vacancy of 5.9% for the first quarter of 2009 for the suburban market and for the Naperville/Aurora submarket of 5.7%. He also noted the market comparable rentals had vacancy rates from 5.5% to 9%. Based on the subject's historical data and the surveys he stabilized vacancy at 8% of gross rental income. The appraiser also made adjustments to the income for concessions of \$219,615 and \$18,288 for the employee unit. The net rental income was calculated to be \$4,230,236 to which he added \$225,000 for other income to arrive at an effective gross income of \$4,455,236. (See Intervenor's Exhibit #1, pages 38 & 39.)

Gibbons testified the historical expense ratio for the subject from 2006 to 2008 ranged from 29.14% to 30.41%, prior to reserves for replacements and real estate taxes. Gibbons testified a 30% operating expense ratio is generally consistent with the market for properties like the subject and supported by IREM.

Gibbons stabilized the expenses for the subject property as follows: management fees \$365 per unit, repairs and maintenance \$550 per unit, apartment turnover \$250 per unit, administration \$160 per unit, payroll & benefits \$1,075 per unit, marketing and advertising \$415 per unit, utilities \$515 per unit, professional fees \$75 per unit, property insurance \$325 per unit, other/miscellaneous \$13 per unit and reserves for replacements of \$300 per unit. Total operating expenses were calculated to be \$1,404,180. Gibbons testified that the stabilized operating expense ratio excluding reserves was 29.17%, within the subject's historical range, and with reserves is 31.52%. Deducting expenses resulted in a net operating income of \$3,051,056.

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In estimating the capitalization rate to be applied to the subject Gibbons consulted the *Korpacz Real Estate Investor Survey* for the first quarter of 2009 that indicated an average rate for institutional grade national apartments of 6.88%; Marcus & Millichap Second Quarter 2009 Apartment Research Market Update for the Chicago Metro Area reported capitalization rates in the mid 7% range; the Real Estate Research Corporation Spring 2009 report indicated the going-in capitalization rate for Chicago apartments was 7.2% and the 2010 Chicago Apartment Sales Summary report published by Hendricks & Partners indicated the average capitalization rate in 2009 was in the mid-6% range. Using the band of investment the appraiser estimated a capitalization rate of 6.78%. Using the comparable sales #1, #3, #4 and #5 Gibbons extracted capitalization rates ranging from 5.05% to 7.38% for an average of 5.83%. Considering these calculations Gibbons estimated a capitalization rate of 6.50% for the subject property. To this he added a tax load of 2.0185% resulting in an overall capitalization rate of 8.50%. Capitalizing the net income resulted in an indicated value under the income approach of \$35,900,000, rounded.

Gibbons used five comparable sales located in Naperville and Glendale Heights in developing an opinion of value under the sales comparison approach. The comparable apartment complexes had from 12 to 20, two-story or three-story buildings with 200 to 417 apartments. The total building area ranged from 191,040 to 440,840 square feet. The comparables had sites ranging in size from 731,808 to 933,304 square feet of land area resulting in land to building ratios ranging from 2.06:1 to 4.12:1. The comparables had occupancy rates ranging from 91% to 96.4%. The sales occurred from October 2006 to June 2009 for prices ranging from \$19,500,000 to \$66,250,000 or from \$97,500 to \$163,636 per unit or from \$102.07 to \$159.66 per square foot of building area. Gibbons sale #4 was the same property as Ryan's sale #5. Gibbons testified the primary unit of comparison was the price per apartment unit. Sale #1 was located  $\frac{1}{4}$  mile south of the subject property next to the Metra rail commuter station. Gibbons testified that residents from the subject property and this comparable have the ability to walk to the train station, which he stated is a positive amenity. Comparable #2 is located two miles south of the subject property. Gibbons testified sale #3 is actually located in Woodridge, Illinois but has a Naperville address. Sale #4 is located approximately  $\frac{3}{4}$  of a mile east of the subject property. Gibbons testified sale #5 is located about 10 miles northeast of the subject property in Glendale Heights and is about 15 years older than the subject property. The witness was of the opinion Glendale Heights is not as desirable as Naperville.

Gibbons was of the opinion age does have an impact on sales price. He testified that as a property gets older it generally would not be as desirable in terms of rental standpoint and probably would have higher operating or maintenance expenses. He testified that all factors being equal the newer property would be superior.

With respect to the market condition adjustment, Gibbons adjusted sales #1, #2, #3 and #5 downward because they sold in October 2006, May 2007, January 2008, and April 2007, respectively, during a time of superior market conditions than in January 2009. Gibbons made no market condition adjustment to sale #4 that sold in June 2009. Gibbons also made adjustments to the comparables for such items as location, condition/age, occupancy rates and land to building ratios. Gibbons also testified that the buyer of comparable #5 assumed an outstanding mortgage but he was not able to determine the terms of the note. Gibbons assumed the terms of the mortgage were favorable so a downward adjustment was made for financing. Overall downward adjustments were made to sales #1, #2 and #3; while upward adjustments

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were made to sales #4 and #5. After analyzing the sales Gibbons determined an adjusted unit value range from \$105,000 to \$110,000 and concluded a unit value for the subject property of \$107,500 or \$37,400,000, rounded, under the sales comparison approach.

In conclusion Gibbons estimated the subject had an estimated value under the sales comparison approach of \$37,400,000 and under the income approach of \$35,900,000. In reconciling the two approaches to value Gibbons stated in the report that both the sales comparison approach and the income approach were given significant weight and ultimately estimated the subject property had a market value of \$36,700,000 as of January 1, 2009.

With respect to the mortgage crisis, Gibbons testified generally apartment complexes have fared better than other asset types because there has been a decline in single family home building and a lot of people lost their homes and had to find alternate sources of housing.

Under cross-examination Gibbons testified there were some negative effects to multi-family housing as the result of the economic recession, which intensified in the latter half of 2008. Gibbons testified during this period capitalization rates were rising. With respect to market rents for multi-family property, Gibbons testified he did not have the information on hand with respect to whether market rents for multi-families declined from January 1, 2008 to January 1, 2009, but suspected there was probably some weakness in the market which would have been reflected in the concessions that were being offered.

Gibbons indicated the adjustments to the comparable sales were qualitative adjustments and a significant portion of the downward adjustments for comparable sales #1 and #2 were for market conditions. Gibbons was shown the Illinois Real Estate Transfer Declaration (PTAX-203), which was marked as Appellant's Exhibit #5, associated with his comparable sale #3. Gibbons was aware that the answer was "No" to question 7, which read "Was the property advertised for sale?" He did not give this sale any less emphasis due to the parties to the transaction answering "Yes" to question #8 on the PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A, asking "In your opinion, is the net consideration for real property entered on Line 13 of Form PTAX-203 a fair reflection of the market value on the sale date?" For sale #5, Gibbons was shown Appellant's Exhibit #6, the Illinois Real Estate Transfer Declaration (PTAX-203) and the associated PTAX-203-A, Illinois Real Estate Transfer Declaration Supplemental Form A completed by the parties. One of the parties answered "No" to question #8 on form PTAX-203-A and stated, "The purchase included the assumption of \$14,845,000 in tax-exempt bond financing, which carries intangible value from the buyer's perspective." Gibbons testified the idea is that a party is willing to pay more for a property if he is able to assume below market financing. Gibbons did not have the terms of the note so he was not able to make a cash equivalency adjustment but made a qualitative adjustment to the sale.

Gibbons testified the rents quoted for sale #1 were as of February 2009, the rents quoted for sale #2 were as of February 2009, the rents quoted for sale #1 were as of January 2008, the rents quoted for sale #4 were as of the date of the transaction (June 2009), and the rents quoted for sale #5 were as of the sale date (April 2007).

With respect to the rental comparables, Gibbons stated on page 37 of his report, "The rents noted above represent the quoted market rent, and do not include concessions." With respect to his

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rental comparable #1, the management was offering 1.5 to 2 months of free rent on select units, which would cause the \$1.14 average rent to be adjusted lower after concessions are backed out. On page 38 of his appraisal Gibbons, using the rent roll dated January 25, 2009, indicated the market rent of the subject property was \$408,038 per month, \$4,896,456 annually, \$1,172.52 per unit per month and \$1.33 per square foot per month. He indicated that almost all the subject units would have rents that commenced in 2008.

With respect to the chart on page 46 of his report, Gibbons agreed there was a typo with his reference to "Health Club/Fitness Center." Gibbons agreed he did not cite published sources for his determination of a 5% return on equity in developing the band of investment technique. With respect to extracting capitalization rates from the market, Gibbons agreed he cited the CoStar report, which was marked as Appellant's Exhibit #7, as the source for the 5.49% rate for sale #1. Gibbons did not know the author of the report, did not independently review the assumptions made in extracting the capitalization rate and did not know if the income was "trailing income" or "year one income." The income and expense data on page two of the exhibit did not show a line item for reserves. Appellant's Exhibit #8 was the CoStar report associated with Gibbons' sale #3 that cited a pro-forma capitalization rate of 5.5%. Gibbons did not independently gather information to verify that the capitalization rate was extracted properly and did not know whether the rate was before or after reserves were deducted. With respect to sale #5, Gibbons did not do anything to independently verify the 5.38% capitalization rate reported by CoStar COMPS was extracted correctly. For comparable sale #6, Gibbons had the information to extract the capitalization rate of 7.38%. Gibbons also agreed that with respect to the chart on the bottom of page 47 of his report, the second, third and fourth surveys were the local surveys he cited with capitalization rates of 7.20%, 7.50% and 6.50%, respectively.

Under re-direct, Gibbons testified that Co-Star COMPS is a proprietary service that is paid for to provide research materials used by brokers and just about every appraiser. He asserted this is a resource that appraisers typically rely upon. Gibbons further testified if the leases are at market, there is no difference between the leased fee and the fee simple.

The next witness called on behalf of the intervenor was James Donovan, Chief Deputy Assessor for Naperville Township. Donovan has been employed at the Naperville Township Assessor's Office for 25 years. As chief deputy assessor his primary responsibilities include assessing commercial, retail, industrial and multi-family properties including apartment complexes.

Donovan prepared a document marked as Intervenor's Exhibit #2. Page 14 of Intervenor's Exhibit #2 was described as an income statement based off the appellant's stated gross potential income from the appraisal of \$3,969,216. Donovan deducted 10% of potential gross income or \$396,921 for vacancy and collection loss and added \$200,000 for other income, also from the appellant's appraisal, to arrive at an effective gross income of \$3,772,295. Donovan also accepted the appellant's appraiser's estimate of expenses of \$1,565,500 to arrive at a net income of \$2,206,795. In addition to disagreeing with the appellant's appraiser's estimate of the vacancy and collection loss, Donovan also disagreed with the capitalization rate used by the appellant's appraiser. Donovan testified he went to the market to derive a loaded capitalization rate of 7.15% composed of an overall rate of 5.13% plus a tax load of 2.02%. Capitalizing the net income resulted in an estimated value of \$30,864,270, which Donovan testified supported the subject's assessment.

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Donovan also developed the sales comparison approach using 6 comparable sales that were outlined on page 16 of Intervenor's Exhibit #2. Of the six comparable sales, comparables #1, #2, #5 and #6 were located in Naperville Township. Five comparables were located in Naperville and one comparable was located in Aurora. The comparables were apartment complexes with buildings constructed from 1973 to 2004 and five of the comparables were described as having buildings ranging in size from 272,400 to 442,205 square feet of building area. The comparables had from 319 to 417 apartments. These properties had sites ranging in size from 435,600 to 1,379,108 square feet of land area with five having land to building ratios ranging from 1.02:1 to 3.39:1. Donovan's sale #1 was the same property as Ryan's sale #2 and Donovan's sale #2 was the same property as Gibbons' sale #2. The sales occurred from April 2006 to May 2007 for prices ranging from \$33,500,000 to \$66,250,000 or from \$95,170 to \$163,636 per unit. Donovan indicated the 2009 assessment of the subject property reflects a market value of roughly \$30,600,000 or \$87,931 per unit. Based on his review of the sales Donovan was of the opinion an upward adjustment of the assessment was warranted.

Under cross-examination Donovan testified he thought Naperville Township fared better than most places and that values did not deteriorate as much as nationally during the latter part of 2008, although he did agree values did deteriorate a little bit. He also agreed that his capitalization rate of 5.13 percent was an average rate that was extracted from sales that did not take place in the same conditions that were happening in the latter part of 2008 or later.

Donovan also testified the 2010 assessment of the subject property was reduced to \$9,805,690 due to a negative equalization factor.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction in the subject's assessment.

The appellant contends overvaluation as the basis of the appeal. Conversely, the intervenor contends the subject property is undervalued for assessment purposes. Except in counties with more than 200,000 inhabitants that classify property, property is to be valued at 33 1/3% of fair cash value. (35 ILCS 200/9-145(a)). Fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the evidence in this record demonstrates a reduction in the subject's assessment is warranted.

In this consolidated hearing for the 2009 and 2010 tax years the parties presented the same evidence for both years with the only difference being the DuPage County Board of Review was

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defaulted in the 2010 appeal for the failure to submit its "Board of Review Notes on Appeal" or any evidence. During the hearing only the appellant and the intervening school district presented evidence for this Board's consideration. The owner presented the testimony and an appraisal prepared by Joseph M. Ryan estimating the subject property had a market value of \$25,600,000 as of January 1, 2009. The intervenor presented the testimony and an appraisal prepared by James A. Gibbons estimating the subject property had a market value of \$36,700,000 as of January 1, 2009. The intervenor also presented the testimony and a report prepared by James Donovan, Chief Deputy Assessor for Naperville Township. The subject's 2009 assessment reflects a market value of \$30,710,034 or \$88,248 per unit, including land, using the 2009 three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. The subject's 2010 assessment reflects a market value of \$29,464,213 or \$84,667 per unit, including land, when applying the 2010 three year average median level of assessments for DuPage County of 33.28% as determined by the Illinois Department of Revenue.

Initially, the Board gives little weight to the evidence and testimony provided by Donovan. Using an income approach to value Donovan primarily relied on the potential gross income and expenses used by Ryan in his appraisal. Donovan used a 10% vacancy and collection loss but provided no citation to any surveys or studies that would support this estimate. Additionally, Donovan used an overall capitalization rate of 5.13%, which was extracted from sales that occurred prior to the 2008 economic downturn. The Board finds this capitalization rate is not supported by relevant data reflective of the market as of January 1, 2009 and January 1, 2010. Second, the comparable sales used by Donovan sold from April 2006 to May 2007. All the sales occurred prior to the economic downturn that took place in the latter part of 2008. The Board finds these sales are not representative of the market as of January 1, 2009 and January 1, 2010 and are given little weight.

The remaining evidence for the Board's consideration includes the two appraisals prepared by appraisers who each have the MAI designation and are State of Illinois Certified General Real Estate Appraisers. Despite similar credentials the appraisers arrived at vastly different opinions of market value. Ryan estimated the subject property had a market value of \$25,600,000 or \$73,563 per unit, including land, as of January 1, 2009. Gibbons estimating the subject property had a market value of \$36,700,000 or \$105,460 per unit, including land, as of January 1, 2009. The difference in the estimated values put forth by the respective experts was 43%.

The appraisers agreed on the physical description of the subject property and agreed on the subject's highest and best use. Additionally, both appraisers developed the income capitalization approach to value and the sales comparison approach to value. Furthermore, both appraisers were in agreement that there was an economic downturn in the latter part of 2008 that had a negative impact on the value.

In developing the sales comparison approach Ryan utilized six sales and Gibbons used five comparable sales. Both appraisers used sales that occurred in 2006, 2007 and 2008. Ryan's sales #1, #2, #3 and #4, which sold from June 2006 to August 2007, each received a downward adjustment due to superior market conditions at the time of their respective sales. Gibbons' sales #1, #2, #3 and #5, which sold from October 2006 to January 2008, all received downward adjustments due to superior market conditions at the time of sale. Due to the dates of sale and

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the fact that each sold during a time of superior market conditions, the Board gave these sales less weight.

Ryan's comparable sale #5 and Gibbons' sale #4 was a common sale identified as Brookdale Lakes, 1812 Gowdey Road, Naperville. This comparable was improved with 20, two-story apartment buildings constructed in 1991 located on a 787,129 square foot site. Both appraisers described the comparable as having 200 apartment units. Ryan described the comparable as having 181,040 square feet of building area while Gibbons described the comparable as having 191,040 square feet of building area. The sale occurred in June 2009, after the economic downturn in the latter part of 2008, for a price of \$19,500,000 or \$97,500 per unit. Ryan adjusted this sale down due to the fact this comparable had fewer units than the subject, resulting in an overall downward adjustment. Gibbons adjusted this comparable downward for its larger land-to-building ratio and upward for age and overall inferior quality, resulting in a net upward adjustment.

Ryan's comparables sale #6 sold in 2009, after the economic downturn. This comparable was located in Naperville and was improved with a two-story garden style apartment complex constructed in 1985 with 320 units. The sale occurred in October 2009 for a price of \$24,745,000 or \$77,328 per unit. Ryan adjusted this sale down due to its above market occupancy rate at the time of sale.

The Board finds the two sales submitted by the appraisers that occurred after the economic downturn in late 2008 had unit prices, prior to adjustments, of \$77,328 and \$97,500 per unit. The Board finds both appraisers made general qualitative adjustments to their sales that were not particularly well supported. Ryan ultimately estimated the subject had an indicated value under the sales comparison approach of \$73,500 per unit. The Board finds this estimate understates the value considering the two sales that sold most proximate in time to the assessment date at issue, after the market downturn in 2008, for unit prices of \$77,328 and \$97,500. Gibbons ultimately estimated the subject property had an indicated value under the sales comparison approach of \$107,500 per unit. The Board finds Gibbons' estimated value overstates the market value of the subject property considering the two sales that sold most proximate in time to the assessment date at issue, after the market downturn in 2008, for unit prices of \$77,328 and \$97,500. The sale most similar to the subject in number of units was Ryan's sale #6 with 320 units. However, this comparable was seventeen years older than the subject indicating an upward an adjustment for age would be appropriate. The sale common to both appraisers had fewer units requiring a downward adjustment. The comparable also had a slightly larger site and a higher land-to-building ratio supporting a downward adjustment. Considering the two best sales in this record the Board finds a value of \$82,500 per unit or \$28,700,000 is appropriate under the sales comparison approach.

Under the income approach to value a major difference between the two experts was the estimate of market rent to be applied to the subject property. Using comparable rentals and a price sheet for the subject, Ryan estimated the subject had a potential gross income of \$3,969,216, which equates to a rent of \$1.08 per square foot of gross building area per month. Using the subject's rent roll and comparable rentals, Gibbons estimated the subject property had an annual potential gross income of \$4,896,456 which equates to \$1.33 per square foot of building area per month. The Board finds Ryan's estimate of market rent is better supported using the comparable rentals

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and the price sheet used to rent the subject units as of December 31, 2008. The Board finds that Gibbons' estimate of market rent of \$1.33 per square foot of building area per month was greater on an average square foot basis than the comparable rentals he used as set forth on page 37 of his appraisal. Additionally, Gibbons seemed to ignore the Marcus & Millichap report contained at pages 14 through 17 of his appraisal indicating that asking rent trends decreased in 2008 and into 2009. Ryan at page 15 of his appraisal referenced Marcus & Millichap in discussing the drop in asking rents and effective rents. Based on this record the Board finds Ryan's estimate of potential gross income of \$3,969,216 is better supported.

Ryan and Gibbons were in near agreement with respect to the vacancy and collection loss associated with the subject property. Ryan estimated a stabilized vacancy and collection rate of 7.5% while Gibbons estimated a stabilized rate of 8%. The Board gives most weight to Ryan's estimate of a 7.5% loss of potential gross income or \$297,691 for vacancy and collection loss. Ryan estimated other income to be \$200,000 while Gibbons stabilized other income at \$225,000. Gibbons included in his report a copy of the 2006 through 2008 income statements for the subject property that indicated other income ranged from \$227,310 to \$333,289 after excluding bad debt recovery and interest. The Board finds Gibbons estimated stabilized other income is better supported. After deducting vacancy and collection loss and adding other income the Property Tax Appeal Board finds the subject property had an effective gross income of \$3,896,525.

In estimating expenses to be deducted from the effective gross income both appraisers examined the subject's operating history and compared the results to IREM. During the course of cross-examination it was pointed out that Ryan erred in calculating the administrative and general expenses. Ryan estimated operating expenses to be 36% of effective gross income, excluding reserves and approximately 40% inclusive of reserves. During testimony Ryan indicated that excluding real estate taxes the subject had an historical expense ratio of just under 30% for 2007 and 2008. Ryan further agreed that to properly compare his stabilized expenses to the subject's historical expenses the real estate taxes should be taken out. Gibbons stabilized operating expenses at 31.52% of effective gross income, inclusive of reserves and 29.17% excluding reserves. The subject's historical expense ratio from 2006 through 2008 ranged from 29.14% to 30.41%, excluding reserves. Based on this evidence and testimony the Board finds an expense ratio of 31.52% of effective gross income or \$1,228,185, inclusive of reserves, is supported. After deducting the expenses from the effective gross income results in a stabilized net income of \$2,668,340.

Ryan estimated an overall capitalization rate of 7.25% should be applied to the subject's net income. Gibbons estimated a capitalization rate of 6.50% was appropriate. Gibbons' report had one sale that occurred in June 2009 with a market derived capitalization rate of 7.38%. Gibbons' report also had reference to three surveys of the local market reporting capitalization rates ranging from 6.50% to 7.50%. Ryan testified that Realtyrates.com, an investment survey of different types of properties, reported capitalization rates in the second quarter of 2009 between 4.7% and 12.2%. Considering the data in both reports, the Board finds Ryan's estimate that the appropriate overall capitalization rate for the subject of 7.25% is better supported. The Board also finds both Ryan and Gibbons were in near agreement with respect to the effective tax rate to be added to arrive at a loaded capitalization rate. Based on this record the Board finds Ryan's estimate of a loaded capitalization rate of 9.25% is the best estimate in the record. Capitalizing

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the stabilized net income found herein the Board finds the subject had an indicated value under the income approach of \$28,850,000, rounded.

In conclusion, after considering the testimony of the appraisers and the data in the respective reports, the Board finds the subject property had an indicated value under the sales comparison approach of \$28,700,000 and an indicated value under the income approach of \$28,850,000. Giving equal weight to the two estimates of value, the Board finds the subject property had a market value of \$28,775,000 as of January 1, 2009. Since market value has been determined the Board finds the 2009, three year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue, shall apply. (86 Ill.Admin.Code §1910.50(c)(1)).

The Property Tax Appeal Board further finds the evidence and testimony in each appeal for the 2009 and 2010 tax years is the same. Therefore, the Board finds that the assessment as established for the 2009 tax year and the 2010 tax year should be the same.

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<b>APPELLANT:</b>	<u>Niemann Foods Inc.</u>
<b>DOCKET NUMBER:</b>	<u>08-01360.001-C-3</u>
<b>DATE DECIDED:</b>	<u>October, 2013</u>
<b>COUNTY:</b>	<u>Macon</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of 6.07 acres improved with a one-story commercial building utilized as a grocery store. The building contains 64,183 square feet of building area, which includes a 1,583 square foot mezzanine. The subject improvement was constructed in 1986 with a reinforced concrete foundation, steel framing, a flat metal roof with tar and gravel covering and exterior block walls. The subject is fully sprinklered and features an asphalt parking lot. The subject is located in Hickory Point Township, Macon County, Decatur, Illinois.

The appellant appeared through counsel before the Property Tax Appeal Board arguing that the fair market value of the subject was not accurately reflected in its assessed value.<sup>1</sup> In support of this argument, the appellant submitted an appraisal prepared by Certified General Real Estate Appraiser J. Edward Salisbury of Salisbury & Associates, Inc. estimating the subject property had a market value of \$2,700,000 as of January 1, 2008 (Appellant's Ex. 1).

As its witness, the appellant called J. Edward Salisbury, who has over 30 years of appraisal experience.<sup>2</sup>

Salisbury testified the site had 6.07 acres and was improved with 64,133 square feet of building area that he described as a "big box" store built in 1986. Salisbury testified that the subject is currently used and has been used as a grocery store. Salisbury further testified that "big box" stores typically encompass standard retail and grocery stores. Of particular interest, Salisbury testified that "big box" stores have a limited number of users nationally and they depreciate rapidly because if one of them becomes dark or goes vacant, there are very few potential buyers today for that type of retail outlet. Because of the rapid depreciation, Salisbury stated that he chose not to use the cost approach to value.

Salisbury was of the opinion the subject's highest and best use as vacant would be for continued use as a commercial site, and as improved, the subject's highest and best use would be for its current use as a commercial facility. He also estimated in his report that the realistic marketing time for the subject would be 9 to 12 months due to the subject's open design and local demand.

Salisbury testified that the subject is located in a fully developed, mostly commercial area. He looked for land sales, but did not have much luck in finding any, which is another reason he did not develop a cost approach to value. Salisbury testified he developed the income approach to value and the sales comparison approach to value.

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<sup>1</sup> Attorney Clark Mills argued the appellant's case at the hearing. Attorney Jackson Donley filed a substitution of attorney on September 14, 2011.

<sup>2</sup> Salisbury was tendered and accepted as an expert without objection.

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In developing the income approach to value, Salisbury first searched for rent comparables. Salisbury testified that as a general rule, most "big box" stores are not built as income producing investment property. They are built by owner/users. Salisbury testified that "big box" stores differ from small stores in a strip mall or in a regional mall in that they are normally single tenant buildings, and as a result the rents tend to be quite lower than they are for smaller retailers.

With the foregoing in mind, Salisbury selected four rentals and two rental listings. The properties were located in Canton, Mahomet, Wood River, Washington, Peru and Bourbonnais, Illinois. One comparable was described as a commercial building and the other five were described as retail grocery stores. The leased spaces ranged in size from 24,775 to 95,888 square feet of building area. The rental improvements were built from 1977 to 1993. Their rentals or offerings ranged from \$2.05 to \$6.90 per square foot. The appraiser made adjustments to the comparables for market conditions (date), location, age, size and lease terms. Based on an analysis of this data, Salisbury estimated the subject had a market rent of \$5.00 per square foot of building area. The appraiser estimated the subject had a gross potential income of \$320,915.

Salisbury assumed a vacancy and credit loss of 5% based on rental surveys, conversations with leasing agents and the average demand for commercial buildings approximately the same size as the subject given the subject's market area for an effective gross income of \$304,869. Next the appraiser calculated an operating fee along with exterior maintenance of 10% of effective gross income or \$30,487, annually. After making these deductions, Salisbury estimated the subject had a net operating income of \$274,382.

The appraiser then estimated the overall capitalization rate for the subject from the market and use of the direct capitalization method to be 9.5% using actual sales and leases of national malls, office buildings, warehouse and apartment buildings taken from Valuation Insights & Perspectives for Professional Real Estate Appraisers published by the Appraisal Institute, Second Quarter 2008. Salisbury also used the Investor Survey, Developer Survey and the Market Survey published by RealtyRates.com. Salisbury also reviewed office sales data files for strip malls, regional malls and big box stores. A review of these files depicted returns ranging from 7% to 15% from 2005 to present (2008). Based on market indicators, the locational and physical characteristics of the subject property, Salisbury estimated an overall capitalization rate of 9.5%. Capitalizing the subject's net income resulted in an estimate of value under the income approach of \$2,888,232 or \$2,900,000, rounded.

Salisbury next developed the sales comparison approach to value. In doing so, he selected seven comparable sales and one pending sale which were located in Princeton, Pekin, Decatur, Springfield, Macomb and Chatham, Illinois. In his testimony, Salisbury noted that he tried to select comparable "big box" store sales based on size and age.

The selected comparables ranged in size from 38,835 to 88,140 square feet of building area and ranged in age from 9 to 31 years old. The comparables were situated on parcels ranging from 1.807 to 21.51 acres and featured land-to-building ratios ranging from 1.94:1 to 10.63:1. The properties sold or had a pending sale from August 2004 to November 2008 for prices ranging from \$755,000 to \$2,100,000 or from \$12.20 to \$47.63 per square foot of building area, including land. After making adjustments to the comparables for date of sale, location, size, land-to-building ratio, age and condition, the appraiser was of the opinion the subject had an

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indicated value under the sales comparison approach of \$42.00 per square foot of building area or \$2,695,686 or \$2,700,000, rounded.

In reconciling the two approaches to value, Salisbury gave most weight to the sales comparison approach to arrive at an estimate of value of \$2,700,000 of January 1, 2008.

On cross-examination, Salisbury acknowledged that in preparation of the appraisal, there were sales of grocery stores or "big box" stores that were closer in location to the subject that he discounted or did not consider to be valid comparable sales. Salisbury testified that he did not use them because those stores contained around 100,000 square feet of building area. Even though they were approximately the same age as the subject, they were still 30,000 square feet larger than the subject, which puts them in a different market area. Salisbury explained that as the store gets bigger, potential investors are decreased. In addition, Salisbury testified that grocery stores have more plumbing and freezer capabilities than stores like an older Wal-Mart or Kmart.

The next witness called to testify was Michael E. Lipowsky. He has served as a deputy supervisor of assessments for two years for Vermilion County and two years as a deputy assessor for Danville Township. He is the owner of Lipowsky & Associates, a real estate appraisal and consulting firm in Decatur. Lipowsky is a certified general real estate appraiser with an IFAS designation from the National Association of Independent Fee Appraisers. Lipowsky testified that he also has a CIAO designation and is a level II certified appraiser/assessor in the State of Indiana. He is also a past president of the National Association of Independent Fee Appraisers. Lipowsky was not certified as of the date of the Property Tax Services report, Appellant's exhibit 2. Lipowsky became certified in 2005 or 2006 and updated his appraiser license in 2009. Lipowsky testified that he has appraised over 1,000 commercial and industrial properties.<sup>3</sup>

Lipowsky testified that he visited the subject on two different occasions in November of 2008. Lipowsky described the subject similar to Salisbury, however, he added the subject contains 300 parking spaces, had an actual age of 22 years at the time of the report, and felt the property was in relatively good condition with an effective age of 15 years. Lipowsky found the subject's class C masonry exterior wall structure could be used for a number of commercial applications. In addition, Lipowsky testified that the parking lot was adequate with the site being visible on Pershing Street in a very good commercial area in the City of Decatur. However, Lipowsky found that the area of Pershing Street where the subject is located is not considered a good growth area anymore. Lipowsky found the subject's building type to be average. Lipowsky testified that he found several vacancies in the area like K's Merchandise, right across the street from the subject, a Schnucks grocery store, just down the road and K's Department store. Lipowsky found an over-supply of properties in the subject's immediate area.

Lipowsky examined eight comparable sales and one listing. The comparables were located in Forsyth, Decatur, Pekin, Chatham and Springfield. The properties ranged in size from 30,000 to 114,086 square feet of building area, had land-to-building ratios ranging from 2.01:1 to 10.69:1, effective ages ranging from 6 to 30 years old and wall heights ranging from 16 to 26 feet. The comparables sold or were listed for sale from February 2003 to November 2008 for prices

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<sup>3</sup> Lipowsky was tendered and accepted as an expert in real estate valuation.

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ranging from \$400,000 to \$5,098,034 or from \$20.11 to \$51.30 per square foot of building area, including land. The comparables were adjusted for date of sale, size, location, parking adequacy, land-to-building ratio, effective age, wall height, class of construction and quality of construction. After making adjustments, Lipowsky concluded an upper value limit for the subject of \$2,700,000.<sup>4</sup>

Lipowsky further testified that he examined comparable sale #1 utilized by the board of review. Lipowsky testified that he did not believe the sale to be an arm's length transaction. In support of this claim, Lipowsky presented a transfer declaration sheet to show the property was not advertised on the open market and that the buyer and seller were basically the same parties. Lipowsky also testified that board of review sale #2 was located in Aurora, a collar county of Chicago, which is a totally different market area than Decatur. In addition, board of review sale #2 was part of a portfolio of three sales. As to board of review sale #3, Lipowsky testified that this sale was also part of the package deal involved with sale #2.

On cross-examination, Lipowsky testified that Property Tax Services was his client and hired him to do an appraisal of the subject. He admitted that the appraisal report does not conform to USPAP guidelines. Lipowsky testified that the report was more of a limited assignment for Property Tax Services that included evidence of sales. Lipowsky testified that he prepared his report prior to knowing another appraisal was being done. Lipowsky verified each sale he used by either a discussion with the buyer, seller or broker of each individual transaction. Lipowsky admitted that he prepared the report at a time when he was not certified as an appraiser, however, since becoming certified, he would not change his opinion of value.

The Board of review presented its "Board of Review Notes on Appeal" wherein the subject's final assessment of \$1,100,000 was disclosed. Based on the subject's assessment and utilizing the 2008 three-year average median level of assessments for Macon County of 33.25%, the subject property has an estimated fair market value of \$3,308,271 or \$51.54 per square foot of building area, land included.

In support of the subject's assessment, the board of review submitted three comparable sales. The sales are located in Normal, Aurora and Joliet. Dasya Miller, Clerk of the Macon County Board of Review, testified that the board of review examined the sale of a property across the street from the subject to determine the subject's value. Subsequent to determining the subject's value, the board of review requested and received information regarding three sales, which she submitted as the board of review's evidence. The sales were depicted as one-story commercial buildings of masonry or masonry and stucco construction. Each comparable was depicted to be a grocery store. They were situated on parcels ranging from 4.85 acres to 9.33 acres. The improvements ranged in size from 46,539 to 63,952 square feet of building area. The comparables sold from June 2006 to April 2007 for prices ranging from \$4,200,000 to \$6,412,500 or from \$82.32 to \$100.31 per square foot of building area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

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<sup>4</sup> Lipowsky's comparables #4, #6, #7 and listing #1 were the same properties as Salisbury's comparables #2, #3, #7 and pending sale #1, respectively.

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On cross-examination, Miller testified that she believed the sales to be arm's length transactions because she received the sales from the Illinois Department of Revenue. Miller admitted that comparable sale #1, page 4 depicts the sale as not being an arm's length transaction based on the buyer and seller being related parties. Miller further admitted that the transfer declaration sheet for this sale depicts it was not advertised for sale on the open market. Miller further admitted that the buyer and sellers for comparable sales #2 and #3 were the same parties. She admitted that the properties transferred on the same day, March 1, 2007, which may indicate they were sold as part of a portfolio package deal. Miller acknowledged that the sale directly across the street from the subject, also used by Lipowsky as his sale #2 was relied upon heavily by the board of review in estimating the subject's value. She admitted that it sold in 2007, and then was resold in 2008. Miller further admitted that the property sold for less in 2008 than it did in 2007. Miller admitted that, even though it was available, the board of review did not submit the 2008 sale of this property into the record. Miller testified that she did not verify any of the sales received from the Department of Revenue.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that a reduction in the subject's assessment is warranted.

The appellant contends the assessment of the subject property is excessive and not reflective of its market value. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill. App. 3d 1038 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in the record supports a reduction in the subject's assessment.

The appellant submitted two appraisals estimating the subject property had a market value of \$2,700,000, as of January 1, 2008. The Macon County Board of Review submitted three comparable sales. The subject's assessment reflects a market value of \$3,308,271.

The Board gave no weight in its analysis to the report prepared by Michael E. Lipowsky. The Board finds the report which provides an estimate of value for the subject was not prepared in conformance with USPAP guidelines and Lipowsky was not licensed to prepare such an estimate of value for the subject at the time of preparation of the report. The Board also gave little weight in its analysis to the three sale comparables submitted by the board of review. The Board finds that the arm's length nature of each sale was called into question by the appellant. The Board finds the board of review was unable to refute each allegation as presented by the appellant that each sale was either not advertised, was part of a portfolio sale, involved related parties or otherwise sold at a later date for a substantially lower price. The Board finds the assessor was not present to provide support neither for the subject's assessment nor subject to cross-examination regarding the subject's estimated market value. The Board finds the best evidence in this record of the subject's estimated market value is found in the appraisal prepared by J. Edward Salisbury.

The Board finds the appraisal and testimony provided by Salisbury is better supported and more credible than the evidence submitted by the board of review. Salisbury developed two of the three traditional approaches to value in developing his estimate of market value.

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With respect to the income approach to value developed by Salisbury, he selected four rentals and two rental listings. The rentals ranged from \$2.05 to \$6.90 per square foot. After adjustments, Salisbury estimated the subject had a market rent of \$5.00 per square foot of building area. He then calculated the subject's potential gross income of \$320,915 and after making deductions for vacancy and credit losses, opined the subject had a net operating income of \$274,382. Capitalizing the estimated net income of the subject resulted in an estimate of value under the income approach of \$2,888,232 or \$2,900,000, rounded.

In addition, the Board finds that Salisbury's conclusion of value under the sales comparison approach is well supported. The Board finds that Salisbury provided a clear description of the sales he used in his report. The additional data and more complete descriptions provided the Board with a better understanding of the physical characteristics of the comparables which in turn leads to a better understanding and confidence in Salisbury's analysis. While the Board recognizes that the comparables used by Salisbury had different attributes when compared to the subject, such as size and location, the Board finds that Salisbury adequately explained his adjustment process to account for these differences and these properties were more similar in size and other attributes to the subject than the comparable sales selected by the board of review. In conclusion, the Board finds that Salisbury's estimate of value under the sales comparison approach is more credible than the estimate developed by the board of review.

In his final conclusion of value and after consideration of the income approach to value and the sales comparison approach to value, Salisbury opined the subject had an estimated market value of \$2,700,000 as of January 1, 2008.

The Board further finds Salisbury's testimony regarding the sale surrounding the property directly across the street from the subject to be credible, and therefore finds this sale to be dissimilar from the subject because it is not a stand-alone building such as the subject, but rather, is located in a strip mall, which as testified to by Salisbury, affects its market value.

In conclusion the Property Tax Appeal Board finds the subject property had a market value of \$2,700,000 as of January 1, 2008. Since market value has been determined the 2008 three-year average median level of assessments for Macon County of 33.25% shall apply.

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<b>APPELLANT:</b>	<b>John J. Rimkus</b>
<b>DOCKET NUMBER:</b>	<b>08-22522.001-C-1</b>
<b>DATE DECIDED:</b>	<b>November, 2013</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>No Change</b>

The subject property contains 7,387 square feet of land improved with a 22-year old, one-story, masonry, commercial office building. The appellant argued that the market value of the subject property was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant, via counsel, submitted an appraisal undertaken by Robert J. Boyle of Sterling Valuation. The appraisal report states that Boyle is a certified general real estate appraiser and holds the MAI designation. The appraiser stated that the subject had an estimated market value of \$120,000 as of January 1, 2008.

As to the history of the subject property, the appraiser stated that the subject was purchased in November, 2006 for a price of \$370,000, but that this sale also included some equipment and that the property was not advertised for sale, but purchased at a Chamber of Commerce meeting under duress. Therefore, the appraiser discounted the purchase price.

The appraisal report utilized only one of the traditional approaches to value, the sales comparison approach, to estimate the market value for the subject property. The appraisal stated that per prior agreement with the client, the appraiser did not use either the cost or income capitalization approaches to value. In addition, the appraisal report states that the subject property was inspected on September 5, 2008 which is nine months after the valuation date.

As to the subject's highest and best use, as vacant, the appraiser opined that commercial use was best, while the subject's highest and best use, as improved, was its existing use.

Under the sales comparison approach, the appraiser analyzed the sales of five suggested comparables, one of which is located in Tinley Park, as is the subject property. The appraisal does not provide information on design, construction material or use. The properties range: in age from 7 to 36 years with two ages adjusted to effective ages without any explanation. They range in improvement size from 3,100 to 11,721 square feet of building area and in land-to-building ratio from 1.23:1 to 12.90:1.

These suggested comparables sold from February 2007 to May 2008 for prices that ranged from \$55.00 to \$87.10 per square foot of building area, including land. The appraiser indicated that no adjustments were made for property rights or date of sale. It further indicates that the locations are considered similar, although appropriate adjustments have been considered and applied accordingly for this factor; however, the appraisal does not describe any of the adjustments. Nor does the appraisal describe the adjustments made for age/condition, location, size, land to building ratio, financing terms, property rights conveyed and market conditions even though the appraisal indicates adjustments were made for these factors. Based on the similarities and differences of the comparables when compared to the subject, the appraisers estimated a value

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for the subject under the sales comparison approach to value of \$65.00 per square foot or \$120,000, rounded. Based on this evidence, the appellant requested a reduction in the subject's assessment.

The Cook County Board of Review submitted its "Board of Review-Notes on Appeal" wherein the subject's final assessment of \$82,079 was disclosed. The subject's final assessment yields a fair market value of \$215,997 when the Cook County Ordinance Level of Assessment for commercial properties of 38% is applied.

As to the subject, the board's analysis stated that the subject was purchased in October 2006 for a price of \$370,000. In support of this sale, the board of review submitted a copy of the subject's Trustee's Deed and Illinois Real Estate Transfer Declaration, PTAX-203, affirming the aforementioned sale data. In addition, the PTAX-203 states: in Line #7 that the property was advertised for sale; in Line #11 that the full actual consideration was \$370,000; in Line #12a that the amount of personal property was \$0.00; and in Line #13 that the net consideration for real property was \$370,000. Further, page #2 of this document reflects the buyer's name and signature as that of the appellant, Dr. John Rimkus.

In support of the subject's market value, the board of review presented descriptive and sales data on five properties suggested as comparable to the subject. These properties are described as one or two-story, masonry, office or office/medical buildings located in Orland Park, Mokena, or Oak Forest. They range in age from 19 to 31 years with one age unknown and in improvement size from 3,400 to 5,000 square feet of building area. The properties sold from March 2003 to February 2010 for unadjusted prices ranging from \$44.40 to \$273.67 per square foot of building area.

The board's cover memorandum also stated that this analysis was not intended to be an appraisal or estimate of value and that the data reflected therein was collected from multiple sources which were not verified, but assumed to be reliable. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the record and considering the evidence, the Property Tax Appeal Board (the "Board") finds that it has jurisdiction over the parties and the subject matter of this appeal. After submission of the parties' evidence, the appellant waived the right to a hearing.

When overvaluation is claimed, the appellant has the burden of proving the value of the property by a preponderance of the evidence. Cook Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 339 Ill. App. 3d 529, 545 (1st Dist. 2002); National City Bank of Michigan/Illinois v. Prop. Tax Appeal Bd., 331 Ill. App. 3d 1038, 1042 (3d Dist. 2002) (citing Winnebago Cnty. Bd. of Review v. Prop. Tax Appeal Bd., 313 Ill. App. 3d 179 (2d Dist. 2000)); 86 Ill. Admin. Code § 1910.63(e). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. Calumet Transfer, LLC v. Prop. Tax Appeal Bd., 401 Ill. App. 3d 652, 655 (1st Dist. 2010); 86 Ill. Admin. Code § 1910.65(c). Having considered the evidence presented, the Board finds that the evidence indicates a reduction is not warranted.

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In determining the fair market value of the subject property, the Board finds the appellant's appraisal unpersuasive for several reasons. The Board finds that the appraiser failed to develop the cost and income approaches to value at the request of the appellant and not because the market lacked data.

Furthermore, the Board finds that the appraisal stated that the subject was purchased in November 2006 which was less than one and one-half years from the assessment date at issue. However, the Board finds that the appraiser's description of the sale is contradictory to the legal documents evidencing the sale. Most especially the appraiser indicates the subject was not listed on the open market but that both the buyer and seller negotiated this sale at a Chamber of Commerce meeting under duress. In addition, the appraiser indicates personalty was included in the sale. However, the documentation submitted by the board of review contradicts the appraiser's statement. These documents affirm the subject's sales data. Specifically, the PTAX-203 states: in Line #7 that the property was advertised for; in Line #11 that the full actual consideration was \$370,000; in Line #12a that the amount of personal property was \$0.00; and in Line #13 that the net consideration for real property was \$370,000. Further, page #2 of this document reflects the buyer's name and signature as that of the appellant, Dr. John Rimkus.

As to the appraiser's sales comparison approach to value, the Board finds that the adjustments or lack thereof to the sale properties were not fully described in the appraisal and therefore, the Board cannot confirm the credibility of these adjustments. In addition, the appraisal contradicts itself in what adjustments were made. In one paragraph, the appraisal indicates no adjustments were made for property rights and the next paragraph lists property rights as one of the characteristics adjusted for. Therefore, the Board accorded the final conclusions of value in the appraisal minimal weight.

However, the courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2<sup>nd</sup> Dist. 1979). The Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. Id. Moreover, in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5<sup>th</sup> Dist. 1989), the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach. Therefore, the Board will also accord the sales data provided by the parties in this appeal, as well as the subject's purchase, most weight.

The Board finds that both parties submitted sales data on a total of 10 sales of commercial buildings located in suburbs neighboring the subject property. The properties ranged in age from 7 to 36 years with two ages adjusted and one age unknown. They range in improvement size from 3,100 to 11,721 square feet of building area and sold from March 2003 to February 2010 for prices that ranged from \$44.40 to \$273.67 per square foot.

As to the subject's size, the Board finds that the appraisal indicates the subject was inspected, but also lists an approximate size for the subject. The appraisal failed to state that the improvement was measured and no sketch of the subject was included to confirm the subject's size. In contrast, the board of review included the property record card for the subject which shows it

## **2013 SYNOPSIS – COMMERCIAL CHAPTER**

was inspected and a sketch of the subject's improvement was included to confirm the subject's size.

Therefore, the Board finds the subject contains 2,250 square feet of building area. The size reflects a market value of \$96.00 per square foot of building area which is within the established range of the comparables. Moreover, the Board finds that this value is supported by the subject's 2006 purchase. After making adjustments to these suggested comparables, the Board finds that the subject's market value is supported and that a reduction is not warranted.

**2013 SYNOPSIS – COMMERCIAL CHAPTER**

<b>APPELLANT:</b>	<u>Sharda Hotels, Inc.</u>
<b>DOCKET NUMBER:</b>	<u>10-01305.001-C-1</u>
<b>DATE DECIDED:</b>	<u>April, 2013</u>
<b>COUNTY:</b>	<u>Rock Island</u>
<b>RESULT:</b>	<u>No Jurisdiction</u>

The subject property consists of a commercial property located in Rock Island County.

The appellant, through counsel, contends overvaluation as the basis of the appeal. In support of this argument the appellant submitted comparable sales, an income statement and a copy of an "Agreement Providing Sole & Exclusive Right of Sale as Transaction Broker." The petition designated the name of the appellant as Sharda Hotels, Inc. (A.J. Patel) with an address of 6902 27<sup>th</sup> Street, Moline, Illinois. Also attached to the petition was a copy of the decision issued by the Rock Island County Board of Review wherein the owner of record is identified as First Choice Hospitality, with the same address as stated on the appeal petition.

By letter dated October 4, 2012, a copy of which was sent to appellant's counsel, the Rock Island County Board of Review averred the Property Tax Appeal Board had no jurisdiction over the appeal because the appeal was not filed by the owner of record or taxpayer. In support of this argument, the board of review cited section 1910.10(c) of the rules of the Property Tax Appeal Board, which provides in part that, "Only a taxpayer or owner of property dissatisfied with the decision of the board of review as such decision pertains to the assessment of his property for taxation purposes . . . may file an appeal with the Board." 86 Ill.Admin.Code 1910.10(c). The board of review provided a copy of the "Notice of Final Decision on Assessed Value by Board of Review" dated February 23, 2011, addressed to First Choice Hospitality as owner; a copy of a screen printout of Assessment Information By Parcel Number for parcel number 17-21-204-002 showing the name and address of the taxpayer as First Choice Hospitality, 6902 27<sup>th</sup> St., Moline, IL; and a Notice of Pendency of Foreclosure filed In the Circuit Court for the 14<sup>th</sup> Judicial District, Case No. 12 CH 140, by First Colorado National Bank d/b/a First Capital Bank, Plaintiff, identifying First Choice Hospitality Group, LLC as a Defendant and title holder of the property. On this record, the board of review requested the appeal be dismissed based on a lack of jurisdiction due to the fact that the owner of record or taxpayer is First Choice Hospitality and not Sharda Hotels, Inc.

By letter dated January 8, 2013, the Property Tax Appeal Board forwarded a copy of the Rock Island County Board of Review request to dismiss the appeal to the appellant's counsel and asked that a response be filed by January 23, 2013. The appellant did not file a response to the Rock Island County Board of Review request to dismiss the appeal.

After reviewing the record and considering the arguments of the parties the Property Tax Appeal Board finds it does not have jurisdiction over the appeal.

Section 16-160 of the Property Tax Code provides in part that:

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[F]or all property in any county other than a county with 3,000,000 or more inhabitants, any **taxpayer** dissatisfied with the decision of a board of review . . . as such decision pertains to the assessment of his or her property for taxation purposes, or any **taxing body** that has an interest in the decision of the board of review . . . on an assessment made by any local assessment officer, may, (i) in counties with less than 3,000,000 inhabitants within 30 days after the date of written notice of the decision of the board of review . . . appeal the decision to the Property Tax Appeal Board for review. . . .(Emphasis added.)

35 ILCS 200/16-160. In accordance with this statutory authority, section 1910.10(c) of the rules of the Property Tax Appeal Board provides that:

Only a taxpayer or owner of property dissatisfied with the decision of a board of review as such decision pertains to the assessment of his property for taxation purposes, or a taxing body that has a tax revenue interest in the decision of the board of review on an assessment made by any local assessment officer, may file an appeal with the Board.

86 Ill.Admin.Code 1910.10(c). These provisions clearly provide that only a taxpayer, owner or taxing body with a tax revenue interest may initiate an appeal before the Property Tax Appeal Board to challenge a decision of the board of review relating to the assessment of the property.

The facts before the Board demonstrate that the owner of the property under appeal is First Choice Hospitality. The record disclosed that First Choice Hospitality is listed as the owner on the board review decision. Furthermore, a review of the evidence provided by the appellant disclosed that First Choice Hospitality is listed as the owner on the "2010 Summary of Assessment Data"; First Choice Hospitality Group, LLC is listed on the income statement; and First Choice (AJ Patel) is listed as the owner on the "Agreement Providing Sole & Exclusive Right of Sale as Transaction Broker." As a final point, the appellant did not respond to the request to dismiss the appeal and is presumed to have waived the objection to the granting of the motion. (See 86 Ill.Admin.Code 1910.64(d)). The record clearly demonstrates that Sharda Hotels, Inc. (A.J. Patel) is not the taxpayer, owner or a taxing body with a tax revenue interest that would have standing to initiate the appeal before the Property Tax Appeal Board to challenge the decision of the Rock Island County Board of Review as it pertains to the assessment of the subject property.

For these reasons the Property Tax Appeal Board finds that it does not have jurisdiction over the appeal. The Board hereby grants the motion to dismiss filed by the Rock Island County Board of Review based on a lack of jurisdiction.

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<b>APPELLANT:</b>	<u>Wilmette Village Center, LLC</u>
<b>DOCKET NUMBER:</b>	<u>07-23630.001-C-1 thru 07-23630.004-C-1</u>
<b>DATE DECIDED:</b>	<u>December, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of four vacant land parcels which contain 39,840 square feet of land.

The appellant argued that the market value of the subject property is not accurately reflected in the property's assessed valuation as the basis of this appeal.

In support of the market value argument, the appellant submitted an appraisal report of the subject property with an effective date of January 1, 2007. The appraiser estimated a market value for the subject of \$795,000, based upon development of one of the three traditional approaches to value, the sales comparison approach. The appraiser inspected the subject on July 23, 2007 and took multiple photographs of the property which were included in the appraisal. The appraiser developed a highest and best use as vacant, for commercial development.

As to the subject's history, the appraisal stated that the subject sold in August, 2005, for a price of \$3,700,000. The appraisal also stated that the buyer indicated that the purchase included approximately 16,685 square feet of an automotive dealership, which has been demolished. The appraisal indicated that the buyers who owned additional property in the subject's area intended to construct an office/bank structure on the property; therefore, the appraiser opined that the buyers paid a premium for the subject property in order to expand their ownership in the area.

The appraiser developed a sales comparison approach using 5 land sale comparables. These properties ranged in land size from 43,560 to 82,716 square feet. The properties sold from May, 2004, to October, 2005 for unadjusted values that ranged from \$9.92 to \$26.73 per square foot. After making adjustments to the comparables, the appraiser opined a market value for the subject of \$20.00 per square foot or \$795,000 under this approach. Based upon this evidence, the appellant requested a reduction in market value.

At hearing, the appellant's attorney asserted that there had been a building on the subject property during tax year 2006, but he indicated that in tax year 2007 the property was vacant.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$219,120. The subject's assessment reflects a market value of \$996,000 or \$25.00 per square foot using the Cook County Ordinance level of assessment for vacant land property of 22%.

The board's memorandum indicated that the subject sold in 2005 for a price of \$3,700,000 or \$84.94 per square foot. In support of this value, a copy of the sale's printout from the CoStar Comps Service was submitted. The one-page printout reflects that the research was licensed to the assessor's office, but failed to indicate that there was any verification of the information or

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sources of data. The printout stated that commercial land of one acre was sold in August, 2005, and identified the property as without an improvement. Further, the printout identified one land parcel, but disclosed this as a 'parcel list' without further explanation.

Moreover, the board of review's evidence included a copy of the property's record card. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the board's representative rested on the written evidence submissions. He stated that he had neither personal knowledge of the subject's sale transaction nor of what the CoStar printout meant regarding a 'partial list' of land parcels.

After considering the arguments and/or testimony as well as reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has met this burden and that a reduction is warranted.

The Board finds the best evidence of the subject's market value to be the appellant's appraisal, which utilized one of the three traditional approaches to value in developing the subject's market value. The Board also finds the appraisal to be persuasive for the appraiser: has experience in appraising and assessing property; personally inspected the subject property; estimated a highest and best use for the property; and utilized market data in undertaking the sales comparison approach to value, while making adjustments to the comparables where necessary.

In contrast, the Board finds that the board of review submitted raw and incomplete sales data for the subject's 2005 sale, while not warranting the accuracy or reliability of this data.

Therefore, the Board finds that the subject property has a market value of \$795,000. Since the market value of the subject has been established, the Cook County Ordinance level of assessment for Class 2, vacant property of 22% will apply. Therefore, the Board finds that a reduction is warranted.

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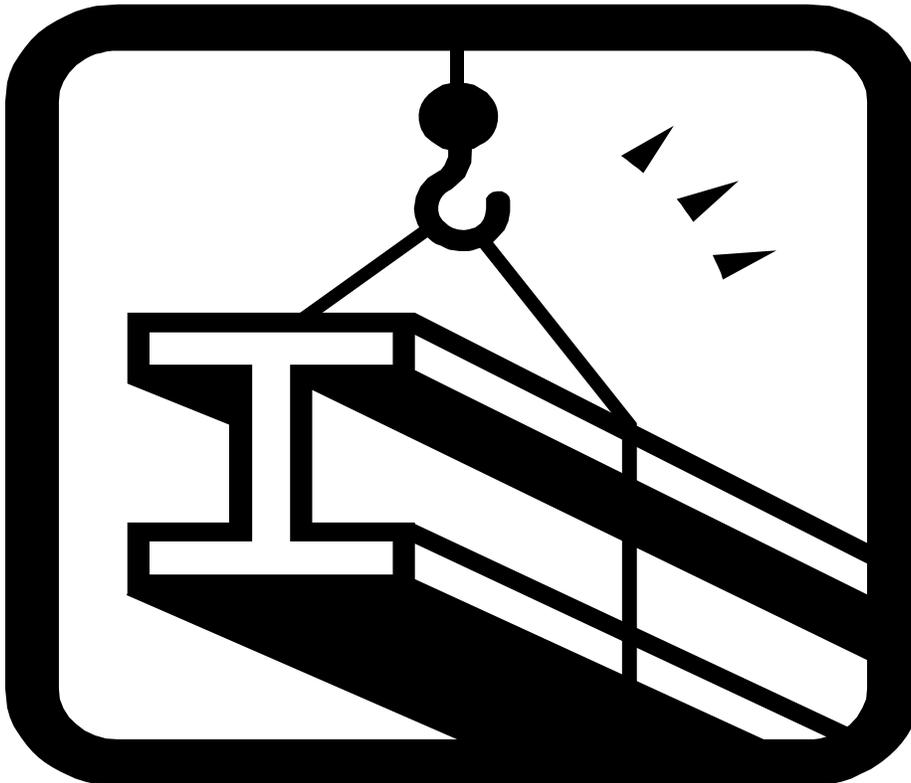
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**PROPERTY TAX APPEAL BOARD**  
**SYNOPSIS OF REPRESENTATIVE CASES**  
**2013 INDUSTRIAL DECISIONS**



PROPERTY TAX APPEAL BOARD  
Section 16-190(a) of the Property Tax Code  
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## 2013 SYNOPSIS – INDUSTRIAL CHAPTER

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<b>APPELLANT:</b>	<u>Alex Colletti</u>
<b>DOCKET NUMBER:</b>	<u>06-29763.001-I-1 thru 06-29763.006-I-1</u>
<b>DATE DECIDED:</b>	<u>May, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of six land parcels containing 27,194 square feet of land area which are improved with a 72-year old, one-story, masonry, industrial building.

The appellant raised the following arguments: that the subject's improvement size was incorrect; and that the market value of the subject property is not accurately reflected in the property's assessed valuation due to demolition, vacancy and market data as the bases of this appeal.

As a procedural matter at hearing, the appellant's attorney withdrew the demolition argument without objection from the board of review's representative; therefore, the Board shall not address this issue.

In support of the market value argument, the appellant's pleadings included: a survey, photographs, a vacancy affidavit, and a grid analysis reflecting three sale properties as well as printouts for these suggested comparables.

As to the vacancy issue, the pleadings included a vacancy affidavit reflecting 19,878 total square feet of rentable area with 6,500 square feet as vacant. The affidavit also indicated that the subject was a 67.5% owner-occupied building. In addition, the pleadings reflected photographs of print advertisements listing the remaining space for lease as well as photographs of signage reflecting space available for lease.

The appellant also submitted printouts for and a grid analysis reflecting data on the same three sale properties. These properties sold from March, 2003, through February, 2004, for prices that ranged from \$405,000 to \$900,000 or from \$25.02 to \$27.00 per square foot. The properties were improved with a one-story or part one-story and part two-story, masonry buildings. They ranged: in improvement size from 15,000 to 35,000 square feet of building area; in age from 39 to 84 years; and in land size from 21,780 to 32,936 square feet of land. As a result of this analysis, the appellant requested a reduction in the subject's valuation.

At hearing, the appellant's attorney asserted that the subject's improvement size was incorrect because the county included 542 square feet of a minor improvement which was allegedly demolished. He also stated that the subject is an owner-occupied, industrial building. As to the appellant's market value argument, the attorney indicated that the submitted sale comparables were located in different appraisals not undertaken for this subject property, wherein he took the data from those other appraisals and submitted in this tax appeal. However, he stated that he had no personal knowledge of whether the usurped sales data had been verified and that he solely relied on the research by the other appraisers. He also indicated that, per his opinion, the submitted five color photographs do not reflect the subject as of the assessment date at issue and that he has not visited the subject property.

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The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$211,788 for tax year 2006. The subject's assessment reflects a market value of \$584,550 or \$29.41 per square foot using the Cook County Ordinance Level of Assessment for Class 5B, industrial property of 36%. As to the subject, the board submitted copies of the subject's property record cards evidencing 19,878 square feet of building area as well as a cover memorandum. The memorandum stated that the appellant argued that a minor improvement on parcel 038 had been wrecked, but that the board of review argued that there was no evidence submitted to support this assertion.

In support of the subject's market value, raw sales data was submitted for 9 industrial properties with either a warehouse or industrial usage. The data from the CoStar Comps service sheets reflect that the research was licensed to the assessor's office, but failed to indicate that there was any verification of the information or sources of data. The properties sold from April, 2001, to September, 2008, in an unadjusted range from \$26.95 to \$117.86 per square foot of building area. The properties contained one-story or two-story, masonry buildings. They ranged: in size from 15,400 to 23,000 square feet; in drive-in docks from one to seven; and in age from 13 to 90 years. The printouts indicate that sales #1, #3, #6, #7, #8 and #9 reflected that the parties to each transaction were not represented by a real estate broker, while sale #2 reflected that the same real estate broker represented both parties in the sale transaction. In addition, sale #5 and #6 appeared to reflect a bulk sale of two properties with similar sales data which were both owner-occupied, while sales #8 and #9 reflect a 2002 and a 2008 sale of the same property.

Moreover, the board of review's cover memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. The memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy. As a result of its analysis, the board requested confirmation of the subject's assessment.

At hearing, the board's representative testified that to his personal knowledge that the board of review's policy is to grant vacancy when the evidence supports such a reduction and includes: interior and exterior photographs showing vacancy in the tax year at issue, an affidavit including square footage of occupancy and vacancy, as well as evidence of attempts to mitigate the vacancy. Thereafter, he stated that relief is applied by a formula related to an estimated potential gross income and net income based upon market rent with the extraction of a land value and then application of an occupancy factor.

After considering the arguments and reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code

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1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has not met this burden and that a reduction is not warranted.

The Board finds the best evidence of the subject's building size was submitted by the board of review in the form of property record cards. In addition, the Board finds that the appellant failed to submit sufficient evidence to support the assertion that a minor improvement had been demolished and/or when this demolition might have occurred. The appellant's photographs of the subject demonstrate that the minor improvement was still present on the subject property at the time the subject's photographs were taken. Therefore, the Board finds that the subject's improvement contains 19,878 square feet of building area.

Further, as to the subject's market value, the Board finds that the parties submitted raw sales data on 12 sale properties. In analysis, the Board accorded little weight to the board of review's comparables #5 and #6 for these sales appear to be bulk transfers of related, owner-occupied industrial properties. The remaining 10 comparables sold from April, 2001 to September, 2008, for unadjusted values that ranged from \$25.02 to \$117.86 per square foot, while the subject's market value is \$29.41 per square foot using 19,878 square feet of building area. After making adjustments to these comparables, where necessary, the Board finds that the subject's market value is supported by these sale comparables and that no reduction is warranted.

Moreover, the Board finds the appellant's argument that the subject's assessment is excessive due to a partial vacancy is unconvincing. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

[i]t is the value of the "tract or lot of real property" property which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value". . . Many factors may prevent a property owner from realizing an income from property, which accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes." Springfield Marine Bank v. Property Tax Appeal Board 44 Ill.2d 428 at 430-431.

The appellant did not demonstrate that the subject's vacancy diminished its market value, while failing to submit any probative evidence reflective of the market in respect to this issue. Therefore, the Board gives this argument no weight.

As a result of this analysis, the Board finds the appellant has not adequately demonstrated that the subject was inequitably assessed by clear and convincing evidence and a reduction is not warranted.

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<b>APPELLANT:</b>	<u>Ford Motor Company</u>
<b>DOCKET NUMBER:</b>	<u>06-31430.001-I-3 thru 06-31430.005-I-3</u>
<b>DATE DECIDED:</b>	<u>May, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of five parcels of land totaling 95.415 acres improved with a manufacturing industrial complex that contains a total of 2,599,463 square feet of building area and has a land to building ratio of 1.60:1. The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value.

In support of this argument, the appellant submitted a complete summary appraisal report with a valuation date of January 1, 2006. The appellant presented the testimony of the appraisal's author, Terrence P. McCormick with McCormick & Wagner, LLC., Chicago. Mr. McCormick testified he has been an appraiser since 1979 and has owned his own appraisal firm since 2000. He testified he is a state of Illinois certified general appraiser and holds the MAI designation from the Appraisal Institute. McCormick stated he has appraised over 1,000 industrial properties over his career and over 100 of those were large industrial or manufacturing plants. The Board accepted Mr. McCormick as an expert witness in the valuation of the subject and large industrial properties without objection from the remaining parties.

McCormick testified he inspected the interior and exterior of the subject on October 29 and December 19, 2002 and April 23, 2007. McCormick was shown *Appellant's Exhibit #2*, a copy of the appraisal he prepared with a valuation date of January 1, 2006 for \$15,600,000.

The witness described the subject property and its environs. McCormick testified the subject is located in an older industrial area with vacant land from former industrial properties that have been razed over time plus additional vacant land that has never been developed. McCormick testified he analyzed the assessor's data and the Sidwell maps to arrive at a land size of 95.4 acres.

McCormick described the improvements as extremely large, older, manufacturing building with construction starting in 1924 and additions added as needed. He opined that the average age of the entire complex was 48 years. McCormick stated that approximately 83% of the entire building area is contained within what the appraisal identifies as Building 1 with 2,170,000 square feet of building area and a weighted age of 54 years. He described Building 2 as containing 310,000 square feet of building area, built in 1994 with an addition in 2003, and having a weighted age of nine years. McCormick briefly described several auxiliary buildings and structures that contain a total of 94,000 square feet of building area and an elevated enclosed metal panel tube which contains approximately 27,000 square feet of building area and connects Building 1 to Building 2.

McCormick testified he included the subject's craneways in the valuation as they are classified as real estate and that the overhead cranes were excluded from the valuation as they are considered

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personal property. McCormick testified that the subject's highest and best use as improved is the continuation of its existing manufacturing use.

To estimate a total market value for the subject of \$15,600,000 as of January 1, 2006, McCormick employed two of the three approaches to value: the cost approach and the sales comparison approach to value. McCormick testified the subject property is owner-occupied and that properties that are the size of the subject usually are not leased. He opined that the subject's size and design does not lend itself to multi-tenant use. McCormick testified that the omission of the income approach does not affect the estimate of value of the subject property.

The initial step under the cost approach was to estimate the value of the land at \$4,290,000, or \$45,000 per acre. In doing so, McCormick testified he considered five land sales and one offering. The five sales sold between August 2002 and August 2004. They ranged in size from 12.16 to 49.70 acres and in sale prices from \$9,130 to \$135,490 per acre.

McCormick testified he used the Marshall Valuation Service to estimate the reproduction cost new of all the real estate at \$189,864,605. In establishing a rate of depreciation, McCormick testified he analyzed seven sales of properties included in the sales comparison approach. He testified he estimated the subject property's depreciation at 94% to arrive at the depreciated value of the improvements at \$11,391,876. Adding the land value resulted in a final value estimate of \$15,700,000, rounded.

To estimate a value for the subject through the sales comparison approach, McCormick testified he analyzed seven sales. McCormick testified these sales were all owner-occupied properties and the transfer of a fee simple interest. He testified that six of the properties were manufacturing-type properties with sale #3 being a warehouse building. He further testified that all the properties except sale #6 had rail access and adequate access to the interstate highway system.

The comparables range in size from 366,300 to 2,197,775 square feet of building area and in land to building ratio from 1.42:1 to 9.15:1. The comparables sold from January 2003 to December 2005 for adjusted prices ranging from \$1,500,000 to \$14,000,000, or from \$.23 to \$9.04 per square foot of building area, including land. McCormick testified he confirmed the terms and conditions of the sales through individuals involved in the sales. He testified he made adjustments to each sale for building size, location, date of sale, land to building ratio, age, clear ceiling heights, and percentage of office space. He then described the sales and his adjustments.

McCormick testified size has a great impact on marketability of properties and the size of the subject limits the number of owners that can utilize that amount of space. He further testified he used comparables outside the subject's immediate location because of the size of the subject and opined that the market area for the subject would be the entire Midwest region of the country. He opined that there is an extremely limited market for large industrial properties like the subject as indicated by the low unit prices that these properties command on the market.

McCormick testified that, after all adjustments, he concluded a value for subject of \$6.00 per square foot of building area, including land which reflects an estimated market value under the sales comparison approach of \$15,600,000, rounded.

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When reconciling the two approaches to value, McCormick testified considerable emphasis was placed on the sales comparison approach to value while the cost approach was considered, but given less weight. He opined the cost approach is less reliable on an older property like the subject. The final value estimate of value for the subject property as of January 1, 2006 is \$15,600,000.

McCormick testified that there were no changes in the subject property or market conditions for the subject that would significantly alter this opinion of value as of January 1, 2007 or January 1, 2008.

Under cross-examination by the City of Chicago, McCormick confirmed the subject is located in the Chicago metropolitan area which has a population size that provides the area with a labor pool that is diverse in skill, talent, education, and expertise. He acknowledged that the Chicago metro area has public transportation and six interstate highway systems which make it a major hub for transportation.

McCormick testified the appraisal includes a description of the area surrounding the subject property and that he did not provide a detailed description of the entire Chicago metro market in the appraisal. He confirmed the subject has rail service. He acknowledged that the appellant uses the rail lines to deliver material and supplies to the subject and to ship out product from the subject. He also acknowledged the subject is on the Calumet River which is a transportation waterway. McCormick gave a brief description of the Chicago Manufacturing Campus located near the subject.

As to the sales used by McCormick, he confirmed that size is one of the most important characteristics in identifying comparables. McCormick then testified that the comparables are smaller than the subject. He agreed that the comparables are not located within the Chicago metro area with the exception of comparable #1 and that these properties do not have the same transportation opportunities as the subject. He testified he identified the six comparables outside the Chicago metro area as inferior to the subject in location.

McCormick agreed that comparable #6 is newer than the subject and was purchased by an investor. He testified the property remained vacant after its purchase and was then resold in 2008 for \$16,750,000.

McCormick confirmed the appraisal indicates that there were other sales of industrial properties in the general area of the subject; they were not included in the appraisal due to their substantially smaller and more marketable size. He testified that one of the comparables is one-fifth the size of the subject, but stated that the properties he did not include were smaller than the properties he did use as comparables.

As to the cost approach, McCormick acknowledged the land value increased from his 2003 appraisal. In reviewing his land sales, McCormick confirmed that he used a per acre price figure and that converting this to a per square foot figure would have the comparables prices range from \$.21 to \$3.00 per square foot, approximately.

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McCormick was questioned in regards to the use of his reproduction cost for the comparables in his depreciation analysis. McCormick competently answered the questions in regards to the range of those values. McCormick acknowledged the 94% depreciation rate he used for the subject was for all depreciation and he did not break out how much was allocated to physical depreciation. He further testified that the physical deterioration could be different for each building, but that the property was well maintained and in average physical condition.

McCormick testified he did not utilize an entrepreneurial profit in the cost approach because the subject is a large, single-user manufacturing building and the market does not call for this extra cost for this type of building. He testified that soft costs are already included within the costs for each component.

Under cross-examination by the board of review, McCormick was shown *Board of Review's Exhibit #2*, a copy of the special warranty deed for improved sale #1. He acknowledged the information on this document is the same information he utilized in the appraisal. McCormick was then shown *Board of Review's Exhibit #3*, a copy of a special warranty deed for a subsequent sale of a portion of sale #1 and *Board of Review's Exhibit #4*, a copy of a special warranty deed for a subsequent sale of another portion of sale #1. McCormick testified he did use these subsequent sales of portions of the property in valuing the subject.

Under cross-examination by the Chicago Board of Education, McCormick confirmed that he used local sales for the land sales. He testified he used land sales that all had the same highest and best use as the subject property. He acknowledged he did not use square footage as a unit of measurement, but used acreage. He opined that larger tracts of land use a price per acre. He further stated that for smaller sites, which are common in the City of Chicago, a common unit of comparison is a price per square foot. He acknowledged that the land sales are all smaller than the subject.

On redirect, McCormick testified he considered the labor pool and other amenities related to the subject property's location when valuing the subject. He opined that there is no market data to show values decrease for these large properties the further away they are from Chicago. He opined this is also true in regards to population and labor force. McCormick testified that for a smaller town, the type of transportation needed would not be the same as the City of Chicago; if it's adequate for the small town and adequate for the city, they are comparable, but the scale is different.

McCormick testified that for large land sales, properties tend to be marketed by brokers on a per acre basis whereas with improved sales, the price advertised is typically a price per square foot of building area, including land.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$20,209,230 was disclosed. This assessment reflects a fair market value of \$63,105,875 or \$24.28 per square foot of building area, land included, when the various Cook County Real Property Assessment Classification Ordinance levels of assessments that are allocated to the subject's parcels.

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In support of this market value, the notes included raw sales information on four properties suggested as comparable to the subject. These properties range in size from 1,001,200 to 2,877,165 square feet of building area. They sold between December 2004 and January 2005 with two sale dates unknown for prices ranging from \$19,100,000 to \$68,596,000 or from \$17.36 to \$33.41 per square foot of building area, including land.

At the hearing, the board of review did not call any witnesses and rested its case upon its written evidence submissions. As a result of its analysis, the board requested confirmation of the subject's assessments.

In support of the intervenor, City of Chicago's position, the City of Chicago submitted a summary appraisal of the subject prepared by Michael S. MaRous with MaRous & Company with an effective date of January 1, 2006 and an estimated market value of \$41,000,000. Mr. MaRous testified he has been an appraiser for 32 years and is president of his appraisal company. He stated he is a licensed general real estate appraiser and holds the MAI designation from the Appraisal Institute. He testified he has appraised all types of properties and focuses his practice on the metropolitan Chicago area. He stated he has undertaken over 1,000 appraisals of industrial properties and 50 on major manufacturing properties. The Board accepted Mr. MaRous as an expert witness in industrial and major manufacturing property valuation without objection from the remaining parties.

MaRous testified he inspected the subject on multiple occasions with a full interior inspection on August 27, 2008. He opined the subject's highest and best use as vacant is industrial use and as improved is the continuation of the major industrial use.

MaRous described the subject and the benefit of its location. He opined the subject has the benefit of rail, freight rail access, major road access, relatively close proximity to major interstate systems, water access, and access to a large skilled labor force. He opined that the skilled labor pool in the Chicago metro area adds value to the subject site as well as the transportation available for this labor pool. He further opined that the tax rate is favorable compared to the suburbs surrounding the subject.

As to the subject's site, MaRous testified the subject is a very large site, but can be split among three pieces as follows: the main parcel has 66 acres, but could be subdivided further; the west parcel has 18.6 acres, but has a poor shape; and the third parcel, or the south parcel which has less than 11 acres. He stated the benefit of the site is that it does not have or need retention areas for storm water detention. MaRous testified the subject has significant road frontage.

As to the improvements, MaRous testified the subject is a mix of old and new. He testified most of the subject is over 50 years old, but has been continually upgraded, maintained and modernized. He further testified Building 2, the body side molding building, is very modern and built in 1995 and 2003. He stated this building has some warehouse characteristics. He opined a useful life of the buildings from 50 to 70 years old.

MaRous used the cost and sales comparison approaches to value to estimate a market value for the subject as of January 1, 2006 of \$41,000,000. MaRous testified that because the subject is

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owner-occupied and facilities of this type usually are owner-occupied, the income approach was not applicable to valuing the subject.

Under the cost approach to value, MaRous testified he used his experience appraising industrial properties, his involvement in constructing industrial properties, the information provided by the taxpayer, and published manuals such as Marshall Valuation to estimate a reproduction cost of \$60.00 per square foot for the main plant, \$90.00 per square foot for the side molding building, and \$40.00 per square foot for the auxiliary structures. He testified he accounted for hard and soft costs, but did not include entrepreneurial profit because the subject is built for manufacturing and there is a defined user.

As to depreciation, MaRous testified he reviewed the facilities and the various conditional aspects. He considered the age-life of the buildings and the functional issues. He testified he did not use the market-extraction method because some of the buildings are over 50 years old and one building has an effective age of five years. He testified he depreciated the main building by 67% for physical deterioration, 20% for functional obsolescence, and 5% for external obsolescence for a value of \$10,414,459. MaRous testified he depreciated the body side molding building by 10% for physical deterioration, 5% functional and 5% external obsolescence for a total depreciated cost of \$22,246,920. The auxiliary structures were depreciated by a total rate of 87% for a value of \$628,155. All three improvements had a total depreciated value of \$33,289,534. Site improvements of \$1,000,000 were added to this value. MaRous testified as to how he calculated the category of depreciation.

As to the land value, MaRous testified he analyzed mid-size and larger, industrial sales that had manufacturing zoning. MaRous reviewed nine land sales located in the south Chicago area. The properties ranged in size from 150,282 square feet to 5,111,766 square feet. He testified that some of the properties, although zoned for manufacturing, were bought and redeveloped with either commercial or residential uses and he made major adjustments to these properties. He testified he estimated a land value of \$8,870,000. He broke this value down into three distinct values for the three separate parcels of land that he separated out earlier in testimony. He valued the main parcel of land at \$1.75 per square foot, the west parcel which has the irregular shape at \$3.00 per square foot, and the south parcel at \$3.00 per square foot. The land value was added to the depreciated values of the improvements for a total value under the cost approach of \$43,160,000, rounded.

The next method developed was the sales comparison approach. Under this approach, MaRous testified he searched for major industrial properties in the Chicago metropolitan area and analyzed five sales. He further testified sales #6, #7, and #8 are located in the Chicago metropolitan area, but are more reflective of properties more similar to the body side molding plant. He testified that there is not strong market activity for large manufacturing plants. MaRous opined that the most important characteristics of the subject for comparability were the property rights, then location, benefits of the area such as rail, water and labor pool, quality and functionality of the improvements, age, and size.

MaRous testified to each sale comparable and the adjustments made. Sales #1 through #5 were used to estimate the value of the main plant building. These properties range: in size from 650,000 to 2,877,165 square feet of building area; in land to building ratio from 1.08:1 to 4.00:1;

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and in age from 34 to 63 years. These properties sold from November 2003 to October 2005 for prices ranging from \$6,500,000 to \$70,234,028 or from \$8.18 to \$24.41 per square foot of building area, including land. MaRous testified that sale #3 was a sale and partial leaseback and a downward adjustment was made for this sale. He also testified this property right transfer impacted the degree of reliance he put on this sale. He testified that sale #5 was located at the far remote end of the Chicago metro area.

Sales #7 and #8, MaRous testified, were analyzed to estimate a value for the body side molding building. These properties are located in the Chicago metro area, are modern, mid-size, industrial facilities. They range: in size from 179,164 to 395,064 square feet; in land to building ratio from 1.87:1 to 3.18:1; and in age from new to two years old. These properties sold from January 2005 to October 2005 for prices ranging from \$9,490,000 to \$22,750,000 or \$39.72 to \$75.03 per square foot of building area, including land. Again, MaRous testified as to the characteristic of each comparable and the adjustments required. He testified that sale #8 was leased at the time of sale.

MaRous testified that sales #6 through #8 showed that the subject's body side molding building would sell for significantly more than the main building if the body side molding building was sold separately. He testified he stabilized the subject's unit price range at \$15.50 to \$16.00 per square foot of building area, including land for an overall value range of \$40,291,677 to \$41,591,408 or \$41,000,000.

In reconciling the approaches, MaRous testified he gave greater weight to the sales comparison approach to value because it is reflective of the market and concluded a value for the subject property as of January 1, 2006 at \$41,000,000. MaRous testified that there may have been some additions to the subject in 2007 or 2008 that, if there were, would have increased the value.

Under cross-examination by the appellant, MaRous confirmed he appraised the subject as a single industrial facility. He acknowledged he did an alternative analysis which divided and exposed the property on the market as individual properties, but testified his conclusion of value was for a single property. He acknowledged that this extremely large industrial property appeals to a smaller segment of the market, but agreed he wrote in the appraisal multiple times that the property could readily be divided and exposed to the market as three individual properties. He further testified he wrote that the overall property would have an appeal for an alternate user and that later in the appraisal he wrote that the multiple buildings have been developed for a particular user for a specific operation and this can somewhat limit the number of potential users.

MaRous confirmed that his appraisal report is a self-contained report which means the appraisal contains all of the analyses and data to support the conclusions within the report. He acknowledged the appraisal does not contain any costs to separate the parcel into three separate entities. He explained that the report discusses the flexibility of the property, but it does not include any definite plans.

MaRous testified that the highest and best use of the subject as vacant is to market the three parcels as individual parcels or market it as an assemblage for industrial use.

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As to the land sales, MaRous acknowledged some of the sales occurred in 2000 which is approximately five to six years before the valuation date. He testified he made adjustments for time. MaRous agreed that two sales with land over 1,000,000 square feet sold for \$1.75 and \$1.24 per square foot, but need upward adjustments for date of sale. He testified that he looked at the land on a gross size and also as individual parcels and arrived at an aggregate value of \$2.13 per square foot.

MaRous agreed the subject suffers from functional obsolescence because of the multiple additions built to the property over the years.

As to the sales comparison approach, MaRous agreed he used two different sets of improved sales to arrive at a value for the subject. He acknowledged that sale #1 was not located in the subject's immediate area and is only about one-third the size of the subject. He acknowledged that sales #3, #4, and #5 are not located in Cook County. He acknowledged that many of the comparables are smaller in size than the subject.

MaRous acknowledged that sale #2 was a multi-tenant facility. He testified that the property had a high vacancy rate and the rent appeared to be at market so only a slight adjustment would be needed for property rights. He agreed that sales #3 and #4 were sale-leaseback transactions. MaRous testified that sale #5 was partially leased at the time of sale.

MaRous reiterated that sales #6 through #8 were included to show the market for the body side molding building only. He acknowledged he did not arrive at a separate value for the body side molding building, but did indicate in the appraisal a likely unit price of \$35.00 to \$45.00 per square foot of building area was reasonable for this building. He acknowledged this is an opinion of value. He earlier testified that the building would have an estimated value of \$40.00 to \$50.00 per square foot of building area. He further testified that both values, the value indicated in the appraisal and the value he testified to, would both be correct.

On redirect, MaRous opined that the subject's land to building ratio is not inferior to suburban sites because of the required setbacks, landscaping, and water retention that many suburban locations have.

MaRous testified he reviewed sales #6, #7, and #8 in valuing the entire subject, but clarified these sales focused on the body side molding as these sales are the most comparable to that building and really not very comparable to the original plant.

In support of the intervenor, Chicago Board of Education's position, the board of education submitted a summary appraisal of the subject prepared by Brian F. Aronson with Aronson and Associates, Chicago. The appraisal has a valuation date of January 1, 2006 and a value estimate of \$42,900,000. The intervenor presented the testimony of Mr. Aronson. The parties stipulated that Mr. Aronson is an expert in industrial property valuation for ad valorem tax purposes and he was accepted as such by the Board.

Aronson was shown *Board of Education Exhibit #1*, a copy of the appraisal he prepared with a valuation date of January 1, 2006 for \$42,900,000. He testified he inspected the interior and exterior of the subject on August 27, 2008.

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Aronson testified the subject's highest and best use as vacant would be to remain vacant for future industrial development and highest and best use as improved is its existing industrial structure.

The witness described the geographic area surrounding the subject property. He testified to the extensive industrial area surrounding the subject and the benefits to the subject. Aronson testified that there are three distinct components to the subject and described them as the main parcel, the west parcel which contains the body side building, and the south parcel which is utilized as parking. Aronson then described the improvements located on the property. He testified he used the total building square footage from the main plant, the body side building, the passageways, and the auxiliary buildings to value the subject.

To estimate a total market value for the subject, Aronson employed two of the three approaches to value: the cost approach and the sales comparison approach to value. Aronson testified that as an owner-occupied building and based on the subject's layout and design, the income approach was not germane to valuing the subject.

Under cost approach, Aronson testified the first step is to value the land. He testified he analyzed seven land sales to estimate the value of the land at \$8,105,000, or \$1.95 per square foot. Aronson described each sale. The seven sales sold between February 2000 and December 2003. They ranged in size from 239,580 to 6,969,600 square feet and in sale prices from \$.74 to \$3.33 per square foot. Aronson opined that in the Chicago industrial market, the relevant unit of measurement for land is square foot and not acre.

Aronson testified he used the Marshall Valuation Service to estimate the replacement cost new of all the real estate at \$247,020,461. In establishing a rate of depreciation, Aronson testified he analyzed five sales of properties included in the sales comparison approach. He testified he considered the weighted age of the main building components, the layout and design for each principal improvement and their utility, factors external to the subject, demand for these types of improvements, and analyzed each sale property. Aronson estimated the subject property's depreciation at 86% for a depreciated value of the improvements of \$34,582,864. Site improvements were estimated at \$1,400,000. Adding the land value resulted in a final value estimate of \$44,090,000, rounded.

As to the sales comparison approach, Aronson opined that it is extremely important to consider sales from the local marketplace. He testified he analyzed five sales. Aronson testified he looked to location, the date of sale, size, physical condition, layout and design, property rights conveyed, condition of sale and physical characteristics in comparing the sales to the subject.

Aronson testified to each sale comparable. He testified sale #1 was a multi-building, multi-tenant, industrial facility and was a leased fee sale. He noted this property was 40% vacant at the time of sale and this could have impacted the sale price. Sale #2 was divided for multi-tenant usage at the time of sale. He testified that several factors influenced the price for this sale, including the leased fee transfer; however, the property was only 5% occupied and this had a detrimental impact on the price paid. Aronson testified sale #3 was predominantly owner-occupied at the time of sale and that half the property was leased back to the seller after the sale.

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He testified sale #4 was a leased fee transfer, but sold subsequently in 2007 with only 15% of the building leased on a month-to-month basis. Sale #5, Aronson testified, was a leased fee transfer and after the sale was divided for multi-tenant occupancy.

The comparables range in size from 650,000 to 2,877,165 square feet of building area and in land to building ratio from 1.12:1 to 4.00:1. The comparables sold from November 2003 to October 2005 for prices ranging from \$6,500,000 to \$68,596,000, or from \$7.54 to \$23.84 per square foot of building area, including land. Aronson opined the subject's value would fall in the middle to upper end of the range and he chose an overall value of \$16.50 per square foot of building area, including land. In arriving at this value, he testified he analyzed the elements of comparison. He concluded a value for the subject property under the sales comparison approach of \$42,900,000.

In reconciling the two approaches to value, Aronson testified he considered the strengths and weaknesses of each approach, but most importantly considered the market and determined the market considers the sales comparison approach for this type of property. He gave this approach more weight in concluding a final value estimate for the subject property as of January 1, 2006 is \$42,900,000.

The board of education then attempted to question Aronson in regards to *Board of Education's Exhibit #2*, a copy of a map of the sales comparables used in the appellant's appraisal. This exhibit was not presented to the appellant's witness, Terrence McCormick at the appropriate time, during cross examination. However, McCormick was questioned extensively in cross examination on the location of the comparables he utilized. The Board denied the board of education's request to submit this map into evidence through this unrelated witness. This map was taken into evidence for purposes of an offer of proof and will not be relied upon by the Board.

Aronson testified that there would be no substantial change in value for the subject property from January 1, 2006 to January 1, 2007.

On cross-examination, Aronson opined that one prospective buyer would be an owner-user, but that a buyer could convert the subject to multi-tenant occupancy. He testified this use would still be industrial. He opined that the subject's large building size diminishes its market appeal. He acknowledged that the main building and the body side building could be sold separately. He testified he did not include any analysis of the costs incurred for this separation. He testified he believed each building had separate utilities. He opined there would be no impact on the land to building ratio if the parcels were separate.

Aronson acknowledged that many of the sales comparables he used are multi-tenant properties. He agreed that the subject has functional layout and design deficiencies and suffers from external obsolescence. He acknowledged the main building has a cut up plant configuration.

As to the land comparables, Aronson could not recall when land sale #6 actually sold as two different dates were noted in the appraisal. He acknowledged that three, possibly four, sales took place in 2000. Aronson acknowledged that many of the land sales were significantly smaller

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than the subject. He testified he considered the subject's land as three different parcels based on their physical layout and design and separate parcel identification numbers.

In estimating the replacement cost for the improvements, Aronson testified he used the Marshall Valuation book to arrive at a base cost for the building components and the appraisal reflects the refinements as required to arrive at an estimated cost new. He confirmed he used the market-extraction method to develop the depreciation rate. He testified that if the comparables used for the market extraction method are deemed by someone not to be comparable then there could be a problem with the depreciation rate. He acknowledged he estimated a cost new for the comparables' sales from \$60.00 to \$65.00 per square foot of building area. Aronson agreed it was difficult to measure depreciation for an older, owner-occupied industrial complex that was built in stages.

As to the sales comparables, Aronson acknowledged sale #1 consisted of two multi-tenant industrial buildings and was a leased fee transfer. He testified the property was 40% vacant at the time of sale and that was part of the analysis. He acknowledged that sale #2 was also a multi-tenant industrial property. Aronson testified he did not know the lease terms at the time of sale, but that the building was only 5% occupied. He opined that this sale was not the closest sale to a fee simple sale because any property that is 1% leased is a leased fee transfer. Aronson testified sale #3 was a leased fee sale and he did not know the terms of the lease. He confirmed that 50% of the property was leased back to the seller. Aronson referenced two sales for sale #4. He acknowledged the 2003 sale was a leased fee sale and the 2007 sale would technically be a leased fee sale because 15% of the building was leased on a month-to-month basis. He opined that redeveloping industrial properties to multi-tenant was not speculative because it was being done in the market and sale #4 was an example of this. Aronson acknowledged that sale #5 was also a leased fee sale purchased by an investor. He testified he did not know the terms of the lease for this property.

Aronson testified he was unable to find any fee simple sales in the Chicago area. He would not make a statement as to whether sale-leaseback properties are usually exposed for a reasonable time on the open market. He acknowledged that in some instances a sale-leaseback transaction can represent a financing alternative to raise capital and use assets as a financing tool.

Aronson testified he considered selling the body side building separately. He opined that whether this would allow the building to have direct rail service is irrelevant because the rail spur is located between the body side building and the main building.

On redirect, Aronson testified that the biggest factor used in gathering land sale comparables was analyzing local market data. He confirmed he took the sales dates into account in adjusting for value for the land comparables.

As to the improved sales, Aronson testified he considered the occupancy and information available regarding income, if it was available, when analyzing the leased fee property rights. He testified he considered the real estate taxation for the sales located outside of Cook County when deriving a value for the subject. Aronson testified he was not aware of any significant changes in the property that would affect the value of the property as of January 1, 2008.

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Aronson opined that for a sale-leaseback purchase, it would be fiscally inappropriate for the buyer to decide to pay more for a property than what it would be worth on the open market and the considerations for whatever the sale-leaseback information would be.

In rebuttal, the appellant called Mr. Gary Battuello. The intervenors and the board of review objected to any Battuello testimony outside the parameters of his written appraisal review for MaRous. Upon due consideration of the parties' positions, the Board denied the motion. However, the Board notes the objecting parties' standing objection. Moreover, the Board ordered appellant's counsel to confine any questions in regards to MaRous's testimony to only those statements which varied from their written appraisal.

Mr. Battuello testified he is the managing partner in a commercial real estate appraisal firm in Minnesota. He stated he is a certified general appraiser in Minnesota, Wisconsin and Illinois and holds the MAI designation from the Appraisal Institute. He admitted he was not licensed in Illinois at the time of his review. Mr. Battuello then testified that prior to the change in Illinois law, non licensed appraisers were allowed to review work for non federally-related transactions. Battuello testified he has been an appraiser for 30 years. He testified he has appraised extremely large commercial and industrial properties with over 90 appraisals of industrial properties over 1,000,000 square feet. He noted 20 of those properties would be manufacturing properties. Battuello testified he appraised two automobile assembly plants. He testified he has conducted appraisal reviews on between 50 and 60 appraisals with five or six of those being large industrial properties. Battuello testified he has appeared as an expert at the Illinois Property Tax Appeal Board. He stated he has published articles in property valuation publications. The Board admitted Mr. Battuello as an expert in the field of property valuation of extremely large commercial and industrial facilities, the valuation of extremely large, single-user manufacturing facilities, and as a review appraiser without objection from the remaining parties.

Battuello opined that the outstanding characteristics of the subject are its size and its use as an industrial building. He testified the property is located in an industrial neighborhood, has good highway connectivity, rail access and, to a lesser degree, has water access.

Battuello testified he inspected the exterior of the subject in summer 2012. He opined that the subject would need major modification to facilitate multi-tenancy. He testified that the report he reviewed did not discuss the costs to convert the subject to multi-tenancy.

Battuello agreed that the locational attributes enhance the value of the property. He opined that a property that has similar amenities would also have its value enhanced.

In reviewing the MaRous appraisal, Battuello was shown *Appellant's Exhibit #3*, a copy of his appraisal review report. Even though the MaRous appraisal indicates it is a self-contained appraisal, Battuello testified that a self-contained document is intended to contain all the information that was relied upon in the valuation and explain the various data judgments and conclusions that were reached in the appraisal process. He testified he reviewed the appraisal report, comparing it to market standards.

Battuello testified he agreed with MaRous's conclusion of the highest and best use of the subject as continuation of its present use. He testified that the subject site has a 1.6:1 land to building

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ratio which is pretty tight. He opined that if the south and west parcels were sold off, the main parcel would have a land to building ratio of 1.25:1 and there would be very little land surrounding the main building to allow for ingress, egress, parking and various other functions that a yard serves for industrial complexes.

Battuello agreed with the approaches to value developed by MaRous. He testified MaRous used standard procedures to provide a set of land sales from the south side of Chicago. Battuello testified that the land value was split between the three parcels and imputed at different values. He reiterated that the appraisal did not provide any costs associated with splitting the property. He opined that some of the land sales utilized by MaRous were purchased for a different use. He testified they were all zoned industrial, but some of the properties were purchased for residential or self-storage and not industrial use.

Battuello testified that MaRous did not provide the data that was used to develop the cost new estimates for the subject. He opined that even a summary report would have some backup cost information, but certainly a self-contained report should have that information present.

Battuello testified that MaRous imputed three different rates of depreciation for the components of the building. He opined that typically, for an integrated facility, it would be sold and marketed in its entirety and one would expect depreciation to be uniformly applied to all the improvements.

As to the sales comparables, Battuello opined that MaRous' sales #6 through #8 were presented to demonstrate that the body side building could, in fact, have a higher per square foot price. He testified that would not matter if the entire property were being transferred. He testified that the overall value for the property is actually based on sales #1 through #5.

Battuello confirmed sale #1 is a multi-tenant property. He testified it was much smaller than the subject. He testified sale #2 is a third of the size of the subject and is an older industrial facility, similar to the age of the subject's main building. Battuello indicated this property was also multi-tenant.

Battuello agreed sale #3 was a complex transaction. He testified the property was purchased in its entirety from Caterpillar with Caterpillar leaving about half of the building and leasing back the other half. Battuello testified sale #3 was a short-term sale-leaseback while sale #5 was also a sale-leaseback. Battuello then described sales #6 through #8 and reiterated they were not considered in valuing the subject in its entirety.

The principle of substitution, Battuello testified, is the primary principle in the sales comparison approach. He opined that the sales presented in MaRous' sales comparison approach are not consistent with the principles of substitution as the report is supposed to be a fee simple market valuation of a single-user facility and the data used was leased fees as well as multi-tenant characteristics. Battuello agreed that a property that is subject to one or more leases is no longer a fee simple estate. He also agreed that a leased fee estate can be used to value a fee simple estate if reasonable and supportable market adjustments for the difference and rights could be made. He opined the MaRous appraisal does not include adequate adjustments for property rights

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conveyed. He opined that the appraisal did not contain details about the leases in place for the comparables needed to make adjustments.

In conclusion, Battuello opined that neither of the approaches performed by MaRous were completed properly and the resulting conclusions were neither reasonable nor reliable.

On cross-examination by the City of Chicago, Battuello acknowledged he did not inspect the subject before or at the time he reviewed the MaRous appraisal. He testified he looked around the west parcel to understand its irregular shape and how it relates to the body side building; he did not walk any other portions of the property.

Battuello testified he reviewed the location of the land sales used by MaRous using a mapping service and drove by some. As to the improvements, Battuello testified he inspected the exterior of sales #2 and #5.

Battuello testified the subject could be a single-use property with a special purpose and that the layout restricts uses. He agreed that for true special purpose properties, the cost approach receives the most weight in the valuation process. He agreed that learned treatises indicate that secondary transportation networks are important influences for industrial land, that municipal and/or federal incentives can positively impact land value for urban industrial land area, public infrastructure can add value to industrial land sites, and that fire and police protection typically found in urban areas can also be a positive influence on urban industrial land sites. Battuello agreed with MaRous that the subject's improvements add value to the site.

Battuello was asked multiple questions in regards to the number of appraisals he performed in the Chicago area near the subject. Battuello responded that he prepared an appraisal for a large manufacturing property in Bedford Park 10 years ago. He testified he has not prepared an appraisal in the last three years of a property in the south Chicago industrial market that included estimating a value of vacant land zoned for industrial development.

As to MaRous' depreciation calculations, Battuello opined that MaRous should have deducted depreciation from each cost new and not in one lump sum. He acknowledged that this would result in a higher estimate of value under the cost approach.

As to improved sale #5, Battuello testified that transaction was a sale-leaseback, but that he did not know the terms of the leaseback arrangement. Upon further questioning, Battuello testified he read MaRous' report and incorrectly testified that this transaction may not be a sale-leaseback. He confirmed that this is a leased fee sale. Battuello acknowledged that MaRous considered the leased fee rights of the leased fee sales.

On redirect, Battuello testified that there is a market for the subject. He opined that MaRous' multiple comments in his appraisal that the subject could be separated and sold individually and the subject could be changed to multi-tenant to infer that there is an upside to separating the property which is different than how the subject was valued.

The City of Chicago presented their rebuttal witness, Anthony Uzemack. Mr. Uzemack testified he is an Illinois licensed general real estate appraiser and holds the MAI designation from the

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Appraisal Institute. He testified he has been appointed to the Illinois Department of Professional & Financial Regulations as a member of the Appraisal Disciplinary and Regulation Board. Uzemack testified he concentrates his appraisal practice to the Chicago metropolitan area, but that he is also licensed in Indiana, Michigan, Wisconsin, Kentucky, California, and Georgia. He estimated he has completed at least 2,500 industrial property appraisals with about half of those being manufacturing properties. He testified he has appraised 50 to 75 industrial properties over 1,000,000 square feet. He stated he has testified before the Property Tax Appeal Board for taxpayers and taxing districts. Uzemack was accepted as an expert witness in the appraisal of extremely large industrial manufacturing properties and in appraisal review without objection from the remaining parties.

Uzemack testified he was familiar with the subject property and the area surrounding it. He testified that the subject's area is known as the south industrial market of the City of Chicago and described this area. He also described the Chicago Manufacturing Campus. Uzemack testified he did a drive-by examination of the exterior of the subject property. He testified he was not familiar with the interior of the property.

Uzemack testified he reviewed the McCormick and Wagner appraisal report of the subject property with a valuation date of January 1, 2006. He testified he reviewed the CoStar reports or MLS reports on the sales of the comparables used and looked at public records to verify the information in the report.

Uzemack opined that the McCormick report did not have meaningful discussions of the transportation linkages and neighboring services that benefit the subject property. He opined that the report lacked information as to why Ford has remained in its location since 1924 or why the plant continues to be successful: skilled labor, heavy power, understanding of logistics, and moving product to and from the site with ease. He opined that the conversion of a large industrial property five blocks from the subject to multi-tenant use was not fully explained in the report which was an error of omission.

As to McCormick's improved sales, Uzemack testified the first five sales are substantially smaller than the subject. He opined they have no references and no direct similarity to the subject in size, utility, use, or locational characteristics. He opined the small size of these properties magnifies the error in adjustment.

Uzemack opined that the report should have had further discussion on splitting the subject property and selling the various portions separately. He testified this should have been done in the highest and best use portion of the report. He also testified that McCormick should have explained further about the other Ford property that sold in Ohio and the characteristics of that property that influenced the low price of that sale.

Uzemack opined that McCormick's sales comparison approach is not reliable due to the degree or lack of degree of comparability.

As to McCormick's land sales, Uzemack testified that the four land sales are outside the Chicago market. He further testified that sales in the south industrial market existed that were concurrent with the date of valuation. He opined that the sizes of the sales do not compare to the subject.

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Uzemack opined that the land value conclusion was not supported because the range of land sizes and sales prices was too broad. He testified that a review of the improved sales and the estimates of land values used by McCormick in the depreciation analysis show land sales ranging from \$2,500 to \$97,663 per acre. He testified that this analysis does not show a sale at \$45,000 per acre which is the value McCormick arrived at for the subject. Uzemack opined that those land values appear to support agricultural land and not industrial land.

Uzemack opined that the McCormick appraisal was not accurate, convincing or reasonable in arriving at its estimate of value for the property and therefore, not reliable for January 1, 2006. He further opined this value would not be reliable for January 1, 2007 or January 1, 2008.

On cross-examination, Uzemack acknowledged this appraisal was to value the subject property's unencumbered fee simple interest. He agreed that a property that is leased is encumbered and this condition should be reflective as it's currently used.

Uzemack acknowledged that it may not be proper to consider the pieces of a property separately and total them up to get the aggregate value of the whole. He testified the property should be viewed the same way the market participants would view it and if the market would view the property as more saleable in portioning off the property then there will be evidence in the market as to that need. He further testified it is the goal of the appraiser to appraise the entire fee simple interest as it exists on that date of value.

Uzemack testified he did not find any inaccuracies in the McCormick appraisal, but opined that there were some judgmental errors in the report. Uzemack opined that McCormick contradicted himself in the report when he wrote that the subject market area is not strong enough to justify the expense associated with converting the subject property to multi-tenant occupancy and when he wrote, earlier in the report that the market was on an increase and appreciating.

Uzemack opined that McCormick's reproduction cost new lacked entrepreneurial profit and opined that this is a proper addition to the cost approach for the subject. He also feels that soft costs were not included as well.

As to the use of the improved sales within the depreciation analysis, Uzemack acknowledged that estimating and removing the land values from each sale is an accurate way to arrive at the building value.

Uzemack testified that the extremely large size of the subject is important to its valuation. He confirmed he believed the improved sales, with the exception of sale #1, were located in remote, less populated industrial markets, but that they were still in industrial markets. He agreed that appraisers adjust for location. He further acknowledged that there were no sales of auto assembly plants in the south Chicago market in the last 10 years and that the appraisers have to use the sales they find. Uzemack also testified that he does not know of any auto assembly plants located in multi-tenant buildings.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

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When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has satisfied this burden and that a reduction is warranted.

In determining the fair market value of the subject property for tax year 2006, the Board examined the appellant's and intervenors' appraisal reports and testimony, the board of review's submission, and the appellant's and intervenor's rebuttal documentation and testimony.

The Board finds the board of review did not present or call a witness to testify about their qualifications, identify their work, and testify about the contents of the evidence. In addition, the evidence submitted by the board of review is raw sales data without adjustments and contains a statement that the information is collected from many sources and the data has not been verified nor does the board of review warrant its accuracy. For these reasons, the Property Tax Appeal Board gives the evidence from the board of review no weight.

In reviewing the remaining evidence and testimony, the Board finds that the parties' appraisers agreed on several issues: that the subject is an extremely large, single-user, owner-occupied, industrial property; the highest and best use as improved is the subject's continued industrial use; the income approach was not useful in estimating the subject's market value; and that the comparable sales approach should be given the most weight.

The courts have stated that where there is credible evidence of comparable sales, these sales are to be given significant weight as evidence of market value. Chrysler Corp. v. Illinois Property Tax Appeal Board, 69 Ill.App.3d 207 (2<sup>nd</sup> Dist. 1979); Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5<sup>th</sup> Dist. 1989). Therefore, the Board will give this approach the most weight.

In reviewing the appraisers' sales comparison approaches, the Board finds that both intervenors' appraisers analyzed the same five sales comparables. The City of Chicago's appraiser included an additional three sales, but acknowledged in testimony that these sales were not used in developing the overall value for the subject, but just as an observation of the value of the body side building if that property was to be sold separately. The Board finds that the subject exists as a whole and should be valued as a whole and, therefore, gives no weight to these three sales.

The Board finds one of the main differences in the appellant's sales comparables and the intervenors' sales comparables are the differences in property rights conveyed and the location of the comparables. The appellant's comparables are all fee simple transactions located within the Midwest while the intervenors' comparables are all located in the Chicago metropolitan area or on the outskirts thereof and are leased fee transfers. The Board finds the most important characteristics of the subject are its property rights, its highest and best use, and its size and location. The Board finds the intervenors' argument that the subject's location in the City of Chicago makes any other locations outside of the Chicago metropolitan area inadequate and that

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adjustments could not be made to sufficiently estimate the value for the subject unpersuasive. The intervenors' argument that there is insufficient skilled labor force, fire protection, water quality and transportation network outside of the Chicago area is flawed. The Board finds the fact that there is industrial property located throughout the Midwest establishes that these basic infrastructures exist, in varying degrees, in areas outside Chicago.

Furthermore, the Board finds that the intervenors' appraisers failed to provide market data in regards to the leases for their sales comparables. All five comparables were leased-fee transactions and the appraisers did not have all the information regarding the leases in place to show whether the sale prices were negatively or positively influenced by the leases. Aronson made downward adjustments to sales #1 through #3 for inferior property rights and sales #4 and #5 were adjusted upward for superior property rights; his only explanation for these adjustments was that adjustments were made to reflect if the properties were fully leased or partially leased. MaRous did not make any adjustments for property rights to sales #1 and #4, made downward adjustments to sales #3 and #5 because they were partially leased, and made a small adjustment to sale #2 without any explanation as to why or if this adjustment was upward or downward. The Board finds the only comparable submitted by the intervenors where the leased-fee interest of the property minimally impacted the sale was both appraisers' sale #2 which was only 5% leased at the time of sale. Therefore, the Board will give weight to this sale in its analysis. The appraisers have listed a different building size for this comparable in each of their appraisals. However, the Aronson appraisal explains that subsequent to the sale, the buyer added additional loading docks; therefore, the Board will use the lower square footage as listed in the MaRous appraisal for this comparable.

As to McCormick's sales comparables, the Board finds that sales #1 and #2 are significantly smaller than the subject and adjustments needed for size with these comparables would be significant. The Board further finds that, for this reason, these properties are given less weight.

The parties' remaining sales were given significant weight by the Board. These properties range: in size from 794,620 to 1,547,917 square feet of building area; in land to building ratio from 2.08:1 to 9.15:1; and in age from 8 to 62 years. These properties sold from January 2003 to November 2005 for prices ranging from \$0.23 to \$9.04 per square foot of building area, including land. The subject property's 2006 assessed value equates to a market value of \$24.28 per square foot of building area, including land which is above the unadjusted range of comparables. After considering all the evidence including the experts' testimony and submitted documentation as well as the adjustments necessary, the Board finds that the subject's 2006 market value is \$22,095,436.

As a result of this analysis, the Board finds that the evidence and testimony demonstrated that the subject property was overvalued and that a reduction in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<b>Marathon Petroleum, LLC</b>
<b>DOCKET NUMBER:</b>	<b>07-26385.001-I-3 thru 07-26385.002-I-3</b>
<b>DATE DECIDED:</b>	<b>October, 2013</b>
<b>COUNTY:</b>	<b>Cook</b>
<b>RESULT:</b>	<b>Reduction</b>

The subject property consists of two parcels of land totaling 766,042 square feet (17.58 acres). The property is a bulk oil storage terminal comprised of 8 storage tanks (350,835 barrel safe fill capacity) and a one-story, masonry and metal panel industrial office/garage building containing 1,295 square feet of building area. The appellant, through counsel, appeared before the Property Tax Appeal Board arguing that the fair market value of the subject is not accurately reflected in its assessed value.

In support of this argument, the appellant submitted a complete summary appraisal report. The appraisal has a valuation date of January 1, 2007. The appellant presented the testimony of the appraisal's author, Joseph M. Ryan of LaSalle Appraisal Group, Inc., Chicago. Mr. Ryan testified that he worked at the Cook County Assessor's Office from 1980 to 1985, at two appraisal firms from 1985 to 1991, and then opened his own appraisal firm, LaSalle Appraisal Group, in 1991. He testified he is an Illinois certified general real estate appraiser and holds the MAI designation from the Appraisal Institute. He stated he has been qualified as an expert witness previously in several courts and administrative agencies, including the Illinois Property Tax Appeal Board. Without objection, the PTAB accepted Mr. McCormick as an expert witness in appraisal theory and practice.

Ryan testified he has prepared approximately 30 appraisal reports of petroleum storage facilities. He opined that petroleum storage facilities trade in the market only between oil companies. He further testified that these facilities are all connected to different underground pipeline storage units where they receive and dispense product. He opined these properties are not special use properties, but are limited to oil companies. He testified they are an important cog in the production of oil from crude oil that is refined in different refineries and then pumped to these terminals with the end product put in a tanker truck for distribution to the service station. He opined that these properties tend to sell in bulk. Ryan opined that when these properties do sell, the IRS requires strict steps to be taken to ascertain only the real estate value of the terminal that trades.

Ryan testified he prepared an appraisal report on the subject property for the valuation years 2007, 2010, and 2013. He testified he inspected the subject for the 2007 report on May 17, 2007. He described the subject property and its environs. Ryan testified the subject is a flag-shaped site with very limited frontage on Busse Road and a private access road to the main site. He testified the bulk oil storage tanks were constructed in 1955 with an effective age of 40 years. Ryan testified that the subject is surrounded by bulk terminals owned by other oil companies. Ryan testified the subject is located in a flood zone A, special flood hazard area. He testified there is a creek that runs between the tanks and is susceptible to flooding. Ryan compared and contrasted the subject site to a typical industrial site. Ryan opined a highest and best use for the subject as improved was its continued use as a bulk oil storage terminal.

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To estimate a total market value for the subject of \$2,425,000 as of January 1, 2007, Ryan employed two of the three approaches to value: the cost approach and the sales comparison approach to value. Ryan testified as to why the income approach was not an appropriate approach to estimate the subject's value.

Under the cost approach, Ryan testified he analyzed four land sales located in the subject's market area. Ryan testified the comparables range in size from 450,000 to 1,175,000 square feet. These properties sold from April 2004 to June 2006 for prices ranging from \$2.65 to \$9.82 per square foot. Ryan described each sale. He testified he made adjustments for pertinent factors to arrive at a land value for the subject of \$1.75 per square foot or \$1,340,000, rounded.

Using the Marshall and Swift Cost Manual, Ryan testified he estimated the replacement cost new for the storage tanks to be \$4,959,600. Ryan testified that each tank had exceeded its economic life and that he estimated depreciation at 80% or \$3,967,680. This computed to a depreciated cost new of the storage tanks of \$991,920.

Ryan testified he also developed a depreciated cost for the building using the Marshall and Swift Cost Manual. He testified the cost new is estimated to be \$88,663 and he depreciated this building by 80% to arrive at a depreciated value for the building of \$17,733. These three values were added together along with site improvements of \$375,000 for a total value under the cost approach of \$2,725,000, rounded.

To estimate a value for the subject through the sales comparison approach, Ryan testified that the unit of comparison used by the industry for bulk oil facilities is sale price per barrel capacity. Ryan testified that he used comparables that sold from December 1996 to December 2005 because there is a limited market for properties similar to the subject. He opined that there is not the same effect of appreciation or depreciation for time that would be found in the industrial or other retail markets. He compared the sale of several comparables to demonstrate that the price per barrel changed slightly over a five to seven year period of time.

Ryan testified he analyzed 19 sales of bulk storage tank facilities. He testified he verified the information with the buyers and the sellers. Ryan testified he made adjustments for market conditions, location, size, age, supply source, and land area. He testified that a typical supply source for a facility is a pipeline; the more pipelines the better. He testified there are some sales with a barge or rail supply source.

The properties are located in the Midwest with the exception of sale #3 located in Oregon. Ryan testified he was not concerned that these comparables were not all located in Illinois because they are all dealing with the same product. Ryan testified that sales #4 through #12 occurred as part of the same transaction. He further explained that in the industry, this type of bulk sale is common. He testified the terminals sell with the pipeline and that the IRS is very particular in examining the sale to ensure that only the real estate value is reported for the terminal sale.

The 19 sales occurred between December 1996 and December 2005 for prices ranging from \$2.75 to \$13.22 per barrel capacity. Ryan testified that removing the low sales and high sales would create a range from \$3.85 to \$9.16 per barrel capacity. Ryan testified to the adjustments

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made to the sales for the pertinent factors. He testified that, after all adjustments, he reconciled the subject at \$6.50 per barrel capacity which reflects an estimated market value of \$2,425,000, rounded.

When reconciling the two approaches to value, Ryan testified he accorded more weight to the sales comparison approach to value as this approach is what market participants consider to estimate a value for the subject property of \$2,425,000 as of January 1, 2007. Ryan testified there were no significant changes to the property between the 2007 valuation date and January 1, 2008 and January 1, 2009 that would significantly change the value.

Finally, Ryan opined that using vacant sales would not be appropriate to value the subject because that is not what the subject is. He testified the subject has tanks, a small office, and related facilities for the use and operation of a bulk oil storage terminal facility.

Under cross-examination by the board of review, Ryan testified that all the bulk oil storage terminal appraisals he has prepared were for the taxpayer and all were for ad valorem tax purposes. He acknowledged the subject is located in close proximity to an interstate highway and an airport.

Ryan was questioned in regards to the land sales and their proximity to the subject. He acknowledged that two of the land sales were not vacant lots when they sold, but their buildings were demolished after the sale. He testified that his estimated land value was \$.90 below the lowest price per square foot of the comparables.

As to the sales comparison approach, Ryan reiterated that the sales of bulk oil storage terminals transfer between oil companies. He testified that his sources in the industry have confirmed with him that every one of these sales transfers gets audited by the IRS so that the real estate value applied to the terminal is just that, the real estate only. Ryan was unable to cite any rules or regulations that apply to this statement. Ryan testified that upward adjustments were made to sales #2, #13, #15, #18, and #19. He testified that no locational adjustments were necessary because the sales were all providing the same product. Ryan testified he did not know the price of gas in the sales locations at the time of sale.

Under cross-examination by the intervenors, Ryan acknowledged that 11 of the sales comparables were part of bulk sales. Ryan opined that the subject does not benefit from its proximity to the interstate highway or airport. He acknowledged that there are other oil tank facilities surrounding the subject because of the pipelines in that area. He then opined it may be an advantage for the trucks transporting the fuel to have access to an interstate highway.

Ryan testified he is unaware of any IRS form that a seller or buyer would use to ensure that only the real estate value is reported in the sale. He testified he did not look at any specific form used by the IRS that states the value of the real estate only for each transaction. Ryan opined that the price per barrel would affect the cost of transportation, but would not affect the value of the property. He further opined that the higher oil price would not increase the value of these facilities.

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On redirect, Ryan testified he verified the sales comparables through public records and through discussions with the parties to the transactions. He testified that appraisers do use bulk transfers as sales comparables when the appraiser is able to verify the methods or steps taken in the transaction to ascertain that the value is at market and for the real estate. He opined that the price allocated to the real estate in the bulk transactions he used were not arbitrarily allocated among the individual assets.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$1,230,971 was disclosed. This assessment reflects a fair market value of \$3,419,364 or \$9.17 per barrel capacity, when the Cook County Real Property Assessment Classification Ordinance level of assessments of 36% for Class 5b industrial property is applied.

In support of this market value, the notes included raw sales information on nine land sales suggested as comparable to the subject. These properties range in land size from 11.75 to 70 acres. They sold between March 2002 and June 2008 for prices ranging from \$2,450,000 to \$18,500,000 or from \$93,330 to \$597,643 per acre. The board of review did not call any witnesses to testify and rested on this evidence previously submitted.

In support of the intervenors' position, the intervenors submitted a brief which includes a critique of the appellant's appraisal and raw sales data on three land sales suggested as comparable to the subject. These properties range in land size from 511,830 to 949,813 square feet. They sold from October 2002 to October 2003 for prices ranging from \$2,450,000 to \$6,700,000 or from \$4.67 to \$7.05 per square foot. The intervenors did not call any witnesses to testify and rested on this evidence previously submitted.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the PTAB concludes that the appellant has satisfied this burden and that a reduction is warranted.

Having considered the evidence presented, the Board finds that the best evidence of valuation was submitted by the appellant and demonstrates that a reduction in the assessment is warranted for the assessment year at issue. The Board accorded little weight to the board of review's and intervenors' evidence submissions, due to the failure to present the preparer for testimony and cross-examination concerning qualifications, the methodology used therein, and any conclusions related thereto. Moreover, the Board finds that the board of review's and intervenors' evidence consisted of raw sales data of vacant land without any adjustments.

The Board finds the appellant's appraisal with supporting testimony persuasive because the appraiser: has experience in appraising bulk oil storage terminals as is the subject; undertook an

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interior and exterior inspection of the subject property; developed two of the three traditional approaches to value; provided persuasive rationale for not undertaking the other approach to value; used bulk oil storage terminal sales from the market while undertaking appropriate adjustments; credibly testified as to the use of bulk sales; and verified sale details with a party to each transaction as well as market and official sources.

In addition, the courts have stated that where there is credible evidence of comparables sales, these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App. 3d 207 (2<sup>nd</sup> Dist. 1979). The Court further held that significant relevance should not be placed on the cost approach or the income approach especially when there is market data available. Id. Moreover, in Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (5<sup>th</sup> Dist. 1989), the Court held that of the three primary methods of evaluating property for purposes of real estate taxes, the preferred method is the sales comparison approach.

Based on this analysis, the Board finds that the subject's fair market value for tax year 2007 is \$2,425,000 and, therefore, a reduction is warranted.

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<b>APPELLANT:</b>	<u>Marshall Field's Distribution Center</u>
<b>DOCKET NUMBER:</b>	<u>07-24418.001-I-3 thru 07-24418.021-I-3</u>
<b>DATE DECIDED:</b>	<u>November, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property consists of multiple land parcels containing 898,042 square feet improved with three structures. The main structure is a part one-story and part six-story, industrial warehouse complex of masonry construction built in stages from 1928 through 1991 with approximately 1,465,000 square feet of aggregate building area inclusive of 9,768 square feet of finished office area. The second building is a one-story, masonry and metal panel constructed industrial warehouse containing approximately 120,000 square feet of building area which was built in the early 1970's. The third building is a one-story, masonry, industrial garage containing approximately 15,000 square feet of building area which was built in the 1920's.

As to the basis of this appeal, the appellant argued that the fair market value of the subject is not accurately reflected in its assessed value.

As to the overvaluation argument, the appellant's pleadings included a copy of a summary appraisal undertaken by appraisers, Thomas Grogan and Joseph Ryan. Ryan testified that he holds the designations of State Certified General Real Estate Appraiser and Member of the Appraisal Institute (hereinafter MAI). He stated that he has been an appraiser since 1985, while previously employed with the Cook County Assessor's Office. Specifically, Ryan stated that he had appraised in excess of 4,000 industrial properties with several hundred properties being loft-type properties similar to the subject. In addition, he testified that he has conducted over 50 appraisals of properties which contained over 750,000 square feet of building area. Ryan was offered as an expert in the valuation of industrial properties as well as an expert in the valuation of real estate such as the subject without objection from the remaining party and was accepted as such an expert by the Board.

This appraisal, marked for identification as Appellant's Exhibit #1, was a summary appraisal addressing the sales comparison approach to value, while opining an estimated market value of \$9,500,000 for the subject complex. Ryan stated that the purpose of his appraisal was to determine the market value of the unencumbered fee simple estate of the subject and that the effective date of his appraisal was January 1, 2006. He also indicated that 2006 was the first year of the subject's triennial reassessment period as established by the Cook County Assessor.

He described in detail the subject's site as containing three structures with a total of 1,582,000 square feet of building area sited on approximately 900,000 square feet of land. He testified that the facility is somewhat a relic in the fact that modern industrial buildings or modern distribution warehouse buildings aren't built like this anymore. He stated that the buildings are of average to fair condition and that originally these structures were built on the outskirts of the City of Chicago and next to a railroad line, which is where he stated industrial improvements were built. In addition, he stated that there are still industrial properties located along the rail line to the

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north and south of the subject property. Ryan opined that the subject is not very efficient under modern industrial standards because of its six-story design.

As to the highest and best use analysis, Ryan testified that as improved the highest and best use was its current use as an industrial building, while as vacant, the highest and best use would be for industrial development. Moreover, he testified that he researched the sales history of the subject property and noted a sale in July of 2004. This sale related to the purchase of the entire Marshall Field's chain from the seller, Target Corporation, to the buyer, May Company. Therefore, Ryan testified that an allocation of book value was made on this subject property of \$13,400,000 based upon conversations with parties to the sale. He concluded that the realty value was an allocated price for the subject based upon a portion of the larger transaction, which was the purchase of the entire Marshall Field's chain and not truly reflective of market value.

Ryan testified at length that he considered all three approaches to value, but that properties of the size and age of the subject are typically valued based upon the sales comparison approach to value because the value is focused on by market participants. Moreover, his appraisal stated that the income approach was less reliable because this type of subject property is an older, owner-occupied property that would most likely not be leased. The sales comparison approach indicated a value of \$9,500,000, rounded.

Under the sales comparison approach to value, Ryan's appraisal stated that due to the lack of large, single-tenant industrial sales that he expanded the comparables search to include sales of large, multi-tenant industrial sales as well as smaller, single-tenant industrial sales and adjusted accordingly. Ryan utilized five suggested comparables that are one-story or multi-story, masonry, industrial complexes composed of one or two buildings.

Ryan's properties sold from June, 2003, through January, 2006, for prices that ranged from \$5.76 to \$15.38 per square foot of building area including land, before adjustments. The improvements were built from 1911 to the 1960s. They ranged in ceiling heights from 10 to 35 feet and in building size from 255,187 to 900,000 square feet of building area. The properties contained land-to-building ratios that ranged from 0.68:1 to 2.40:1 and in land size from 236,836 to 2,547,481 square feet. Moreover, the appraisal provided details regarding the number of overhead doors, truck docks, and sprinkler systems. The appraisal indicated that sales #4 and #5 were multi-tenant locations, while sale #2 was converted to multi-tenant use after its sale.

As to sale #1, Ryan testified that this sale was built in the 1940s and had a good deal of comparability in design materials to the subject which was built from the 1920s to the 1950s. Overall, he testified that sales #2 and #4 were comparable in building sizes which were each built prior to or during World War II as was the subject. As to all of the improved sales, Ryan testified thoroughly, explaining the comparability and adjustments applicable to each sale property, while confirming that the details of each sale were verified using available sale documents and at least one principal party to the sale. After making adjustments, he considered a unit value of \$6.00 per square foot of building area to be appropriate for the subject resulting in a market value of \$9,500,000, rounded. Further, he testified that there would no change in valuation of the subject property from January 1, 2006, to January 1, 2008.

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Under cross-examination, Ryan stated that the subject property was located within a tax increment financing district.

The board of review timely submitted "Board of Review Notes on Appeal" wherein the subject's final assessment of \$4,296,064 was disclosed indicating a market value of \$13,858,271 applying the ordinance level of assessment at 36% for class 5b property and the ordinance level of assessment at 16% for class 6b property as designated by Cook County Real Property Assessment Classification Ordinance for the 2007 and 2008 tax years.

At hearing, the appellant did not move to strike the board of review's evidence as hearsay due to the absence of preparer's testimony and opportunity for cross-examination, but requested that the Board accord this evidence diminished weight due to the absence of a witness.

In support of the subject's market value, raw sales data was submitted for 5 properties. The properties are designated as industrial/warehouse, industrial/manufacturing, or Class C Flex locations. The data from the CoStar Comps service sheets reflect that the research was licensed to the assessor's office, but failed to indicate that there was any verification of the information or sources of data. The properties sold in an unadjusted range from \$5.76 to \$28.50 per square foot of building area and range in building size from 117,515 to 500,000 square feet of building area. In addition, the printouts indicated that sales #1 through #3 were part of a multi-property sales transaction.

Moreover, the board of review's memorandum stated that the data was not intended to be an appraisal or an estimate of value and should not be construed as such. The memorandum indicated that the information provided therein had been collected from various sources that were assumed to be factual and reliable; however, it further indicated that the writer hereto had not verified the information or sources and did not warrant its accuracy. As a result of its analysis, the board requested confirmation of the subject's assessment.

After considering the arguments, hearing the testimony, and reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has met this burden and that a reduction is warranted.

The Board finds the best evidence of the subject's market value to be the appellant's appraisal, which utilized one of the three traditional approaches to value in developing the subject's market value. The Board also finds the appraisal to be persuasive for the appraisers: have experience in appraising and assessing property; personally inspected the subject property; estimated a highest

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and best use for the property; and utilized market data in undertaking the sales comparison approach to value, while making adjustments to the comparables where necessary.

In contrast, the Board finds that the board of review submitted raw, unadjusted sales data, while not warranting the accuracy or reliability of this data. Moreover, the board of review failed to present the preparer of the evidence for testimony and cross-examination concerning his/her qualifications, the methodology regarding data used therein, and his/her conclusions.

Therefore, the Board finds that the subject property has a market value of \$9,500,000 as of the assessment date at issue. Since the market value of the subject has been established, the appropriate Cook County Ordinance level of assessment will be applied. Therefore, the Board finds that a reduction is warranted.

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<b>APPELLANT:</b>	<u>Eva Morawa</u>
<b>DOCKET NUMBER:</b>	<u>09-04957.001-I-2</u>
<b>DATE DECIDED:</b>	<u>September, 2013</u>
<b>COUNTY:</b>	<u>DuPage</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property is an 85,411 square foot site (1.96 acres) improved with a one-story tilt/metal manufacturing building constructed in 1988. The structure contains 32,236 square feet of building area with 8,640 square feet of office space. The subject is fully sprinkled and has a land to building ratio of 2.65:1. The subject also features 18,704 square feet of asphalt and 4 overhead doors. The subject is located in Itasca, Addison Township, DuPage County, Illinois.

The appellant, through counsel, submitted evidence to the Property Tax Appeal Board claiming the fair market value of the subject was not accurately reflected in its assessed value.<sup>1</sup> In support of this argument the appellant partially completed Section IV regarding a sale of the subject property. The appeal depicts the subject was purchased in October 2006 for \$2,393,421 from Ron and Mary Jones, unrelated parties. No other information regarding the arm's length nature of the transaction was completed. The appellant also submitted a copy of the Escrow Trust Disbursement Statement in support of the subject's price. Based on this evidence the appellant requested a reduction in the subject's assessment.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$968,500 was disclosed. The subject's assessment reflects a market value of approximately \$2,911,906 or \$90.33 per square foot of building area, including land, using the 2009 three-year average median level of assessments for DuPage County of 33.26% as determined by the Illinois Department of Revenue. In support of the subject's assessment the board of review submitted a spreadsheet of seven masonry or masonry/tilt-up comparable sales that were built from 1975 to 1991. The sale comparables were located in Elmhurst, Bensenville, Wood Dale or Itasca, Illinois. They contained from 24,000 to 50,000 square feet of building area and had land to building ratios ranging from 1.94:1 to 2.99:1. Six of the comparables were one-story and one was part one-story and part two-story with ceiling heights ranging from 18 to 25 feet. They had percentages of office space ranging from 6.38% to 30.10% of total building area. The comparables sold from May 2007 to July 2008 for prices ranging from \$1,850,000 to \$3,550,000 or from \$67.20 to \$90.82 per square foot of building area, including land. Based on this evidence, the board of review requested confirmation of the subject's assessment.

After reviewing the evidence and considering the record, the Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

The appellant contends overvaluation as the basis of the appeal. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d

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<sup>1</sup> Prior to the hearing, appellant's counsel requested the decision of the Property Tax Appeal Board be decided based on the written evidence in the record, and thereby waived oral hearing.

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1038 (3<sup>rd</sup> Dist. 2002). The Board finds the appellant has not met this burden and a reduction is not warranted.

The subject's assessment reflects an estimated market value of approximately \$2,911,906 or \$90.33 per square foot of building area, including land. The appellant submitted evidence regarding a sale of the subject which occurred in October 2006. The appellant also failed to complete Section IV of the appeal petition regarding the arm's length nature of the sale. The Board finds this sale is too remote to aid the Board in its determination of the subject's estimated fair market value as of January 1, 2009, the assessment date in question, particularly given the lack of further details regarding the sale. Therefore, this information was given reduced weight in the Board's analysis. The board of review presented seven sale comparables which sold closer to the assessment date in question for prices ranging from \$1,850,000 to \$3,550,000 or from \$67.20 to \$90.82 per square foot of building area, including land. The Board finds these comparables were generally similar to the subject and support the subject's assessment which reflects a market value within the established range of comparable properties based on total sale price and the per-foot square sale price. Therefore, no reduction in the subject's assessment is warranted.

In conclusion, the Board finds the appellant failed to demonstrate the subject property was overvalued by a preponderance of the evidence.

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<b>APPELLANT:</b>	<b><u>Pancor Management, Inc.</u></b>
<b>DOCKET NUMBER:</b>	<b><u>07-04190.001-I-2</u></b>
<b>DATE DECIDED:</b>	<b><u>February, 2013</u></b>
<b>COUNTY:</b>	<b><u>DuPage</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property is improved with a one-story building of pre-cast concrete exterior construction with 69,731 square feet of building area. The building was constructed in 1998 and is used as an industrial warehouse. The building is designed for two separate users with 58,432 square feet or 87.6% of building area as industrial warehouse space and approximately 8,275 square feet or 11.9% of building area as office space. The north office area has 3,400 square feet of building area and the south office area has 4,875 square feet of building area. The industrial warehouse area has a clear ceiling height of 25 feet. The office area and 50% of the industrial warehouse area has central air conditioning. The subject building has two separate dock areas with the north dock area having four exterior dock spaces with four load levelers and the south dock area having four exterior dock spaces with two load levelers. The property has asphalt paved parking areas for 84 parking spaces. The subject property has a 135,767 square foot site resulting in a land to building ratio of 1.95:1. The property is located at 787-789 West Belden Avenue, Addison, Addison Township, DuPage County.

The appellant appeared by counsel contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted an appraisal prepared by Brian J. Duniec and Terrence M. O'Brien of Terrence O'Brien & Co. estimating the subject property had a market value of \$3,800,000 as of January 1, 2006.

The appellant called as its witness Brian J. Duniec. Duniec has been employed by Terrence O'Brien & Co. as a real estate appraiser for 35 years. Duniec is a State of Illinois General Certified Appraiser and is also a real estate broker licensed by the State of Illinois. Over the last 35 years he has primarily appraised commercial and industrial real estate. He estimated he has appraised over 1,000 industrial buildings over those 35 years. The witness further testified that he has appraised industrial warehouse buildings in DuPage County.

Duniec inspected the subject property on November 2, 2006. He described the building as containing 66,707 square feet of building area based on a survey of the subject property. The witness testified the township assessor indicated the subject building had 69,731 square feet, the building plans called for approximately 67,000 square feet and his measurements from the survey resulted in a calculation of 66,532 square feet of building area.

With respect to the land, the witness testified the survey indicated a land area of 135,767 square feet of land area. Duniec testified the assessor's records indicated the subject property had 141,134 square feet of land area. He further testified his calculations resulted in a land size of 135,768 square feet. Using these records and his calculation Duniec estimated the subject property had 135,767 square feet of land area.

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The appraiser described the subject property as being seven years old as of January 1, 2006 and was in good condition at the time of inspection. The witness described the improvement as a typical building and in the general condition of a building of its age.

In estimating the market value of the subject property Duniec developed the sales comparison approach to value using six sales located in Addison, Elmhurst, Hanover Park, Roselle and Carol Stream. The comparables were improved with one-story single tenant industrial warehouse buildings that ranged in size from 40,076 to 120,812 square feet of building area. The buildings ranged in age from 7 to 15 years old. These properties had ceiling heights ranging from 20 to 30 feet and five were described as having office space ranging from 5% to 14.4% of building area. These properties had sites ranging in size from 98,010 to 243,900 square feet resulting in land to building ratios from 1.83:1 to 4.27:1. The sales occurred from July 2004 to March 2006 for prices ranging from \$2,000,000 to \$6,100,000 or from \$49.91 to \$57.78 per square foot of building area, including land.

The appraiser analyzed the comparables and made adjustments for such factors as location, time, age, building size, ceiling height and land to building ratio. He further explained that each of the comparables is a single tenant building while the subject has been designed for two users. He stated that all things being equal a multi-tenant building will sell for more than a single tenant building requiring upward adjustments for each comparable. After considering these factors and the adjustments, the appraiser estimated the subject property had a market value of \$57.00 per square foot of building area, including land, for a total market value of \$3,800,000.

The witness further testified that in valuing real estate he does not typically consider real estate investment trust (REIT) transactions. He indicated these transactions in many instances are not indicative of market value but investment value. He was of the opinion that when a REIT is used as a comparable it is not an arm's length transaction because the REITS offer a stock option as opposed to the actual real estate.

Under cross-examination Mr. Duniec testified he inspected the subject property and the estimated size for both the land and improvement was based on the surveys, which appeared correct. He explained that he did not actually physically measure the building. He further explained the subject property is being used as a single-tenant building but is designed for two tenants. He testified he adjusted all the single tenant comparable sales upward because the subject could be used by two tenants as multi-tenant buildings will normally sale for more. He further testified that as of January 1, 2006, the property was vacant and was in the process of being fixed up for a new tenant. He further acknowledged that the subject building was 50% air conditioned but he was not aware of any of the comparables being air conditioned.

The witness testified he performed an exterior inspection of each of the comparable sales and verified the sales with various assessors' offices. He further explained he used qualitative adjustments for the comparable sales but they are not depicted on the grid analysis.

Under re-direct the witness testified the subject building has always been used as a single-tenant building.

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Based on this evidence the appellant requested the subject's assessment be reduced to reflect a market value of \$3,800,000.

The board of review submitted its "Board of Review Notes on Appeal" wherein the final assessment of the subject property totaling \$1,550,990 was disclosed. The subject's assessment reflects a market value of \$4,663,229 or \$66.87 per square foot of building area, including land, using the 2007 three year average median level of assessments for DuPage County of 33.26%.

In support of the assessment the board of review called as its witness Frank Marack, Jr., Chief Deputy Assessor for Addison Township. Marack testified that he has been employed by the assessor's office for 33 plus years. Marack has the Certified Illinois Assessing Official (CIAO) designation.

Marack, referencing a copy of the subject's property record card submitted in the 2007 appeal, testified the subject's land size was corrected to reflect 135,763 square feet of land area. He testified the 2006 assessment of the subject property was reduced to correct the land size. With respect to the building area Marack testified he personally measured the building. He testified the subject's property record card contains the sketch of the building and the actual numbers that were inputted to the Apex drawing software to arrive at 69,731 square feet of building area. These numbers were based on his field measurements.

Marack testified he estimated the market value of the property using the sales comparison approach. For the 2007 appeal Marack submitted information on 15 sales located in Bensenville, Wood Dale, Elmhurst, Itasca and Addison. The comparables were improved with one-story or part one-story and part two-story industrial buildings that ranged in size from 52,476 to 81,814 square feet of building area. The buildings were constructed from 1960 to 2000. These properties had building heights ranging from 16 to 32 feet, office space ranging from 2.19% to 42.40% of building area and land to building ratios ranging from 1.64:1 to 3.85:1. These properties sold from July 2005 to October 2007 for prices ranging from \$2,720,852 to \$6,600,000 or from \$51.85 to \$105.23 per square foot of building area, including land.

Marack indicated within the report he considered adjustments to the comparables for location, time, building size, number of units, land to building ratio, construction, age, exterior office wall height and office area. He ultimately estimated the subject property had a market value of \$5,440,000 or approximately \$78.00 per square foot of building area, including land.

Under cross-examination Marack testified that Apex is a commercial sketch program that allows you to put in the dimensions and it calculates the square footage of the building. He did not know the inner workings of Apex.

With respect to the 2007 quadrennial reassessment for Addison Township, Marack explained that all sales for the prior three years are reviewed and the median values are applied to properties to determine value. He testified that for 2007 he used the mass appraisal system to arrive at the original value for the subject but he did not use the mass appraisal system to arrive at his estimate of value contained in the report submitted for the 2007 tax year.

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With respect to the 15 sales used in the appeals for the 2007 and 2008 tax years Marack testified all were located within Addison Township, two were located within the city of Addison.

Marack stated his sale #2 sold in October 2007 and he made no adjustment for time because he did not believe there was a whole lot of change in the market from January 1 to October 2007. He further agreed sale #2 had a land to building ratio of 3.85:1, higher than the subject's land to building ratio, which was highly likely to result in a price more per square foot. With respect to sale #2, Marack was not aware the transaction was a REIT purchase, nor was he aware the property was on the market zero days and he was not aware the sale was an unsolicited offer. Marack also acknowledged his sale #4 had 43.40% of building area as office space, resulting in a downward adjustment. Marack also testified he was aware this comparable had four units. Marack further testified he was not aware that his comparable #6 was an estate liquidation sale. Marack acknowledge sale #7 had a higher land to building ratio than the subject and he did not think that this being a part one-story and part two-story building had a whole lot of impact on value. Marack testified he was aware his sale #8, which was also his sale #10 in the 2006 report, was a three-unit building, and he was not aware this was a portfolio sale. Marack's sale #11 was the same property he used in the 2006 report as sale #6, which had five units in the building. He further stated he was not aware that this was purchased by a REIT with an allocated price for four properties. Marack testified he was aware his sale #12 was a 20-unit building. He further did not know if the transfer declaration revealed this sale as being by a REIT. With respect to sale #15, Marack was not aware this property was part of a portfolio sale of nine properties for \$35,198,000. He was also not aware this property was on the market for 30 days.

Marack testified he would use a REIT sale so long as it was considered an arm's length transaction. Marack further explained that in selecting the sales he did not go beyond reviewing the real estate transfer declarations because there wasn't anything to indicate the sales were other than arm's length transactions.

Based on this evidence, the board of review requested confirmation of the subject's assessment.

After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The Board further finds the evidence in the record supports a reduction to the subject's assessment.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). Proof of market value may consist of an appraisal of the subject property, a recent sale, comparable sales or construction costs. (86 Ill.Admin.Code §1910.65(c)). The Board finds the evidence in the record supports a reduction in the subject's assessment.

For the 2007 tax year the subject property had a total assessment of \$1,550,990 reflecting a market value of \$4,663,229 or \$66.87 per square foot of building area, including land, using the 2007 three year average median level of assessments for DuPage County of 33.26%. The appellant submitted an appraisal estimating the subject property had a market value of \$57.00 per square foot of building area, including land, for a total market value of \$3,800,000. The board of

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review submitted a report prepared by the Chief Deputy Assessor of Addison Township estimating the property had a market value of \$78.00 per square foot of building area, including land, for a total value of \$5,440,000, rounded.

The initial issue for the Property Tax Appeal Board is to determine the size of the subject building. The appellant's appraiser estimated the building had 66,707 square feet of building area based on a survey of the subject building. Marack testified he personally measured the building and submitted a copy of the subject's property record card containing a sketch of the building. He explained the actual numbers were based on his field measurements and were inputted to the Apex drawing software to arrive at 69,731 square feet of building area. The Board finds that Marack's testimony with respect to arriving at a building size of 69,731 square feet is most credible in this record. Therefore, the Board finds the subject property had 69,731 square feet of building area. The Board finds that the appellant's appraiser and Marack differed on the subject's office area. The Board finds neither party presented any specific diagrams to depict the area of the subject building that was devoted to office use. Nevertheless, the Board finds the difference in office area size between the two witnesses is not critical in arriving at the correct assessed valuation of the subject property. The Board finds the parties were in near agreement with respect to the subject's land size.

The Board finds both Mr. Duniec and Mr. Marack relied on comparable sales to support their respective estimates of market value. After considering the testimony of the witnesses and reviewing the data, the Board finds sales #1, #4, #5 and #6 used by Mr. Duniec and sales #6, #11 and #15 presented by Mr. Marack should be given most weight. Sales #2 and #3 used by the appellant's appraiser occurred in 2004 and were given less weight due to date of sale. The remaining sales used by Mr. Marack were given less weight due to such factors as age, office space and style being composed of part one and part two-story buildings. The Board also gave less weight to Marack's sales #2 and #8 due to the fact these appear to be outliers with unit prices of \$105.23 and \$103.38 per square foot of building area, including land.<sup>1</sup>

The Board finds the best sales submitted by the parties had unit prices ranging from \$52.74 to \$78.13 per square foot of building area, including land. The subject's assessment reflects a unit value of \$68.34 per square foot of building area, including land, which is above all but one of the best sales in this record. The Board further finds that the sale for \$78.13 per square foot of building area, including land, was slightly superior to the subject in age, in exterior building height, office area and land to building ratio. Furthermore, there was a question as to whether this property sold as part of a portfolio transaction involving nine properties for \$35,198,000. Thus, the Board finds a significant downward adjustment to this comparable is warranted. After considering these sales and the testimony of the witnesses, the Board finds that Mr. Duniec's conclusion that the subject property had an estimated market value of \$57.00 per square foot of building area is supported. Therefore, the Board finds the subject's assessment should be reduced to reflect a building size of 69,731 square feet valued at \$57.00 per square foot of building area, including land, so as to reflect a value of \$3,975,000, rounded.

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<sup>1</sup> There was also a question as to whether sale #2 was exposed on the market and whether sale #8 was part of a portfolio transaction which may also explain the relatively high unit prices.

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<b>APPELLANT:</b>	<u>John Pavlopoulos</u>
<b>DOCKET NUMBER:</b>	<u>08-26732.001-I-1</u>
<b>DATE DECIDED:</b>	<u>December, 2013</u>
<b>COUNTY:</b>	<u>Cook</u>
<b>RESULT:</b>	<u>Reduction</u>

The subject property contains a 15,405 square foot parcel of land improved with a 44-year old, one and part two-story, masonry, industrial, warehouse building. The appellant argued that the market value of the subject property was not accurately reflected in its assessed value as the basis of this appeal.

In support of the market value argument, the appellant submitted a summary appraisal report of the subject property with an effective date of January 1, 2006. The appraiser estimated a market value for the subject of \$300,000 based upon the three traditional approaches to value. The appraisal indicated the subject was inspected and listed the improvement size as 16,570 square feet of building area.

In addition, the appellant requests a further reduction in the subject's assessment based on the subject's vacancy. In support of this argument, the appellant included copies of an occupancy affidavit, a 2008 rent roll, and income and expense statement for the subject from 2005 through 2008. Based upon this evidence, the appellant requests a reduction in the subject's assessment.

The board of review submitted "Board of Review-Notes on Appeal" wherein the subject's total assessment was \$141,927. The subject's assessment reflects a market value of \$394,241 using the Cook County Real Property Assessment Classification Ordinance level of assessment of 36% for class 5b, industrial property.

In addition, the board of review submitted descriptive and sales data on five properties suggested as comparable. These properties sold for prices ranging from \$550,000 to \$975,000 or from \$42.54 to \$70.00 per square foot of building area. Based upon this evidence, the board requested confirmation of the subject's assessment.

After considering the arguments and reviewing the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal.

When overvaluation is claimed the appellant has the burden of proving the value of the property by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002); Winnebago County Board of Review v. Property Tax Appeal Board, 313 Ill.App.3d 179 (2<sup>nd</sup> Dist. 2000). Proof of market value may consist of an appraisal, a recent arm's length sale of the subject property, recent sales of comparable properties, or recent construction costs of the subject property. 86 Ill.Admin.Code 1910.65(c). Having considered the evidence presented, the Board concludes that the appellant has met this burden and that a reduction is warranted.

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In determining the fair market value of the subject property, the Board considered the parties' evidence and finds the best evidence to be the appellant's appraisal. The Board finds this appraisal to be persuasive for the appraiser inspected the subject property and developed the three traditional approaches to value in estimating the subject's market value. Moreover, market data was used to obtain improved sale comparables while providing sufficient detail regarding each sale as well as appropriate adjustments, where necessary.

The appellant requested a further reduction and submitted documentation showing the vacancy of the subject property. The PTAB gives this aspect of the appellant's argument little weight. In Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970), the court stated:

[I]t is the value of the "tract or lot of real property" which is assessed, rather than the value of the interest presently held. . . [R]ental income may of course be a relevant factor. However, it cannot be the controlling factor, particularly where it is admittedly misleading as to the fair cash value of the property involved. . . [E]arning capacity is properly regarded as the most significant element in arriving at "fair cash value".

Many factors may prevent a property owner from realizing an income from property that accurately reflects its true earning capacity; but it is the capacity for earning income, rather than the income actually derived, which reflects "fair cash value" for taxation purposes. Id. at 431.

The appellant submitted an appraisal which estimated the subject's market value based on income and vacancy factors from the market. An additional reduction for actual vacancy is not warranted.

Therefore, the Board finds that the subject property had a market value of \$300,000 for tax year 2008. Since the market value of the subject has been established, the Cook County Ordinance level of assessment of 36% for class 5b, industrial property will apply and a reduction is warranted.

## 2013 SYNOPSIS – INDUSTRIAL CHAPTER

<b>APPELLANT:</b>	<u>Tempel Smith Trust</u>
<b>DOCKET NUMBER:</b>	<u>09-01363.001-I-2</u>
<b>DATE DECIDED:</b>	<u>February, 2013</u>
<b>COUNTY:</b>	<u>Lake</u>
<b>RESULT:</b>	<u>No Change</u>

The subject property consists of a 30.49 acre site that is improved with an industrial manufacturing building. A significant portion of the land is unusable for development due to its location in a floodplain, floodway, and wetlands totaling approximately 23 acres. The site also contains approximately 3.44 acres of water detention/septic ponds. The subject's site has approximately 7-acres<sup>1</sup> of net usable area. Land to building ratio is 5.6:1 for the total site and 24.4:1 based on the net usable site area of 7 acres.

The improvements contain a total of 74,578 square feet of building area and were constructed in stages from the 1950's through the 1980's, with a recent addition in approximately 1995. The 1995 building addition connected the existing structures to form one building. The primary warehouse and manufacturing space is comprised of a one-story structure of masonry, steel panel and steel frame construction. The building has two offices totaling 5,430 square feet or 7.3% of the building area. The main office has 4,640 square feet. The second office contains 550 square feet. Clear ceiling heights vary from 10 to 40 feet in the older sections of the building while the newer section of the building has 24 foot clear ceiling heights. The building is serviced by eight overhead doors across the rear of the building with access to a rail spur; however, the rail spur is not operational. The building also has three other drive-in doors with ramps, five exterior depressed truck docks with levelers and two interior truck docks with levelers. The building has five overhead bridge cranes with capacities ranging from 1 to 10 tons. The newer section of the building has a recessed floor area for equipment and 5 by 6 foot concrete trench/tunnel that is approximately 50 feet long used for material/waste movement. (See photograph, page 53 of board of review appraisal). Heating and cooling systems vary from section to section of the building. The property has adequate electrical systems. The property is located in Newport Township, Lake County.

The appellant appeared before the Property Tax Appeal Board through legal counsel arguing the subject's assessment is not reflective of fair market value. In support of this claim, the appellant submitted an appraisal of the subject property. The appraisal report conveys an estimated market value of \$1,375,000 as of January 1, 2009. The appraisal was prepared by Martin S. Siegel of S. Siegel & Associates, Ltd.

Siegel determined the highest and best use as vacant would be for development of an office/warehouse light industrial property having features that conform to similar surrounding properties. Siegel determined the highest and best use of the subject parcel as improved is its present use.

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<sup>1</sup> The appellant's appraiser calculated subject as having 19.20 acres of net usable land area.

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The first approach developed by Siegel was the cost approach to value. The initial step under this method was to estimate the land value as vacant using four land sales. The comparable land sales range in size from 8 to 97 acres. The suggested land comparables were located in unincorporated Lake County, Beach Park, Zion and Antioch, Illinois. The land sales occurred from June 2006 to July 2008 for prices ranging from \$600,000 to \$7,440,253 or from \$50,000 to \$76,703 per acre. The appraiser considered differences to the comparables for market condition, utilities or lack thereof, physical characteristics and location. Based on the perceived differences, the appraiser made narrative qualitative adjustments resulting in a per unit land value of \$50,000 per acre. Applying this value indicator to the subject's 19.20 net usable acres resulted in an estimated land value of \$960,000.

Siegel next estimated the reproduction cost new of the subject's improvements using Marshall Valuation Service. Page 46 of the appraisal indicates the subject's improvements have an effective age of 26 years and an economic life of 35 years, resulting in physical depreciation of 75%. However, in the reproduction cost ladder, the appraiser indicated the subject had an effective age of 30 years. The appraiser estimated the total reproduction cost of the building improvements to be \$62.03 per square foot of building area or \$4,266,772, which included all direct and indirect costs. Both curable and incurable physical depreciation was estimated to be 75% based on the age life method and deferred maintenance. Functional obsolescence was estimated to be 15% due to subject's irregular layout, varying ceiling heights, varying construction types and lack of fire sprinkler protection. Therefore, total depreciation was estimated to be 90% or \$3,840,095, resulting in a depreciated reproduction cost of \$426,677. Adding the estimated land value of \$960,000, the appraiser determined a final value conclusion under the cost approach of \$1,385,000.

Siegel next developed the income approach to value using four suggested industrial rental comparables. The rental comparables are located in Waukegan or Gurnee, Illinois, but only limited descriptions were provided. The rental comparables' land size, land to building ratio, construction quality, use, age, design and features were not disclosed. The structures were reported to range in size from 30,750 to 56,000 square feet of building area. Ceiling heights ranged from 23 to 28 feet. The leases were from 12 to 72 month terms commencing from March 2004 to February 2009 for rental rates ranging from \$2.64 to \$4.00 per square foot net building area. The appraiser also reported gross rental rates for comparables 1 and 4 of \$5.10 and \$4.67 per square foot of building area, respectively.

The report indicates rental comparable 1 is a smaller space within a larger multi-tenant building, which warrants positive adjustments for land to building ratio and size, while negative adjustments were required for location, ceiling clearance, construction quality, age and overall condition. Rental comparable 2 is a smaller space within a larger multi-tenant building, which requires a positive adjustment for land to building ratio with negative adjustments for location, construction quality, age and overall condition. Rental comparable 3 is a smaller space within a larger multi-tenant building, which warrants positive adjustments for utility and land to building ratio and negative adjustments due to location, construction quality, age and overall condition. Rental comparable 4 is a smaller industrial building which requires positive adjustments for land to building ratio and negative adjustments due to location, construction quality, age and overall condition. After making the adjustments, the appraiser opined a market rent for the subject of \$2.75 per square foot of building area on a net basis, resulting in a potential gross income of

## 2013 SYNOPSIS – INDUSTRIAL CHAPTER

\$189,158 using 68,785 square feet of building area. The appraiser deducted 10% or \$18,915 for vacancy and collection loss to arrive at an effective annual income of \$170,243. The appraiser next deducted expenses for assumed management fees of 2% or \$3,404; \$.50 per square foot or \$34,392 for reserves for replacement allowance; taxes of \$4,440 when vacant; insurance of \$688 when vacant; maintenance and repair when vacant of \$6,878. Total expenses were estimated to be \$49,802 to arrive at a net annual income of \$120,441.

The appraiser next estimated the capitalization rate to be applied to the subject's estimated net annual income. Using the mortgage-equity technique, the appraiser arrived at a rate of 9%. Capitalizing the net annual income by 9% resulted in an estimated value under the income approach of \$1,340,000.

In developing the sales comparison approach to value, the appraiser selected four suggested comparable sales. The comparables are located in North Chicago, Lake Zurich and Waukegan, Illinois. Comparables 1 and 4 are single-tenant users like the subject. Comparable 3 is a multi-tenant building, unlike the subject. The appraiser did not disclose whether comparable 2 was a single or multi-tenant building. The comparables ranged in size from 28,000 to 86,000 square feet of building area with sites ranging in size from 33,977 to 225,641 square feet of land area, resulting in land to building ratios ranging from of 1.21:1 to 2.64:1. The buildings were built from the 1970's to 1980. Ceiling heights varied from 14 to 22 feet. Comparables 2, 3 and 4 contain 4 to 6 interior/exterior truck docks and 2 or 4 drive-in doors. The properties sold from March 2007 to October 2010 for prices ranging from \$450,000 to \$2,000,000 or from \$16.07 to \$25.28 per square foot of building area including land.

The appraiser made narrative qualitative adjustments to the sales. Comparables 3 and 4 had positive adjustments due to their 2010 sales dates, noting the market had been consistently increasing until 2008, when the credit crisis reduced demand for financing new projects. Comparable 1 has a positive adjustment for its inferior location and comparables 2 through 4 had negative adjustments for their superior location. The appraiser also made both positive and negative adjustments to the comparables for physical characteristics including factors such as age, condition, size, land to building ratio, floor plan, utility and construction quality. The qualitative adjustments in narrative format considered by the appraiser are found on pages 66 and 67 of appraisal report.

Based on the adjusted comparable sales, Siegel estimated the subject property had an indicated value under the sales comparison approach of \$20.00 per square foot of building area land included, resulting in a total market value of \$1,375,000 using a building size for the subject of 68,785 square feet of building area.

Under reconciliation, the appraiser considered the cost approach a realistic indication of value, but expressed it was difficult to precisely estimate depreciation and was supported by the two other approaches to value. The income approach was given secondary consideration. The sales comparison approach shows direct actions of buyers and sellers and was given considerable weight in arriving at a final value conclusion. Therefore, Siegel concluded the subject property had a market value of \$1,375,000 as of January 1, 2009.

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At the hearing, counsel called its first witness Temple (Tim) Smith, Jr. Smith provided testimony in connection with the subject's historic ownership and use. He also provided testimony as to the products manufactured. Smith also gave testimony regarding the building materials and ceiling heights. Smith provided testimony in connection with custom built modifications of the subject building specific to the product line like foundations, power supply and wall partitioning. He testified the subject is the last property in the United States that operates the specific use of manufacturing ferrites, which limits any potential buyers. He testified most ferrites are now manufactured in China.

Counsel next called its second witness, real estate appraiser Martin S. Siegel of S. Siegel & Associates, Ltd. Siegel holds the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute and is an Illinois State Certified General Real Estate Appraiser. A list of Siegel's professional qualifications was contained in the addendum of the appraisal report. Siegel was accepted as an expert witness. At the commencement of examination, Siegel testified he modified his final value conclusion due to a difference (error) in the square footage of the building, as requested by appellant's counsel. Siegel testified he was provided with "updated information" of the building size that was not available at the time the report was prepared. Using a building size of 74,578 square feet and the concluded value of \$20.00 per square foot under the sales comparison approach, Siegel concluded a revised market value of \$1,500,000.

The Board's Administrative Law Judge questioned whether all three approaches to value were recalculated and reconciled. Siegel testified he modified the final value conclusion based solely on the sales comparison approach to value, which was the primary emphasis of the final value conclusion. Siegel agreed with Smith that the subject building suffers from functional obsolescence. Siegel testified the subject is a large, dated special use building that was constructed in stages with low ceiling heights that has no fire sprinkler protection. He testified that there is virtually no other industrial development around the property and it is located in an outlying area, which would come into play in terms of the marketability of the property. He testified there are no public utilities (water) to the property. Siegel was not asked any other questions under direct examination by legal counsel with respect to the appraisal process or the three traditional approaches to value contained within the appraisal report.

Under cross-examination, Siegel testified he sometimes gathers information from the PTAX document (PTAX-203, Illinois Real Estate Transfer Declarations). Siegel agreed comparable sale 2 is located further from the subject than the other comparables utilized, but he did not know the distance from the subject in terms of miles. Siegel testified comparable sale 3 was an industrial building, but did not know who the owner was. Siegel testified he did a "quick read" of the appraisal submitted on behalf of the board of review. With respect to comparable sale 1, Siegel agreed his report shows 28,000 square feet of building area and sold in August 2007.

The board of review submitted its "Board of Review Notes on Appeal" wherein its final assessment of the subject property of \$642,674 was disclosed. The subject's assessment reflects an estimated market value of \$1,955,794 or \$26.25 per square foot of building area including land when applying Lake County's 2009 three year median level of assessments of 32.86%.

In support of the subject's assessment, the board of review submitted an appraisal of the subject property. The appraisal report conveys an estimated market value for the subject property of

## 2013 SYNOPSIS – INDUSTRIAL CHAPTER

\$2,100,000 as of January 1, 2009. (Exhibit 1). The appraisal was prepared by Raymond J. Schmitt of R. J. Schmitt & Associates, Inc. Schmitt holds the Member of the Appraisal Institute (MAI) designation from the Appraisal Institute and is an Illinois State Certified General Real Estate Appraiser. He also holds the Senior Residential Appraiser (SRA) designation. A list of Schmitt's professional qualifications was contained in the addendum of the appraisal report. Schmitt was accepted as an expert witness.

Schmitt determined the highest and best use as vacant would be for development of an industrial building when economically feasible. Schmitt determined the highest and best use of the subject parcel as improved is its present use. Schmitt testified he measured the subject building to determine its size of 74,578 square feet of building area.

The first approach developed by Schmitt was the cost approach to value. The first step under this method was to estimate the land value as vacant using four land sales. The comparable land sales range in size from 106,286 to 246,968 square feet or from 2.43 to 5.67 acres of land area. The suggested land comparable sales were located in Gurnee, Libertyville, and Wadsworth, Illinois. Three sales had I-1 or I-2 Industrial Zoning while one comparable had E or Estate Residential Zoning. The land sales occurred from March 2005 to December 2009 for prices ranging from \$280,000 to \$1,112,567 or from \$2.63 to \$4.57 per square foot of land area. The appraiser considered differences to the comparables for date of sale, size, utilities or lack thereof, zoning and location, resulting in value indicators for the subject's land ranging from \$2.50 to \$3.50 per square foot of land area. The appraiser ultimately determined an estimated land value of \$800,000 or \$2.62 per square foot of land area applicable to the subject's 7 acres of net usable land area.

Schmitt next estimated the reproduction cost new of the subject's improvements using Marshall Valuation Service. Page 64 of the appraisal report details the components associated with the improvements. Schmitt concluded the subject's improvements have an effective age of 30 years. The appraiser estimated the total reproduction cost of the building improvements and depreciated site improvements was \$57.66 per square foot of building area or \$4,300,140, which included both direct and indirect costs, with the exception of entrepreneurial profit. The report indicates that there does not appear to be any entrepreneurial profit since the estimated value under the sales comparison approach shows a value lower than the cost approach, which would indicate that it would not be economically feasible for new construction. The appraisal report depicts curable and incurable physical and functional depreciation calculations of 57% or \$2,451,080. Additional functional obsolescence was estimated to be 10% or \$430,014 due to the subject's varying ceiling heights, varying construction materials and partitioning. Therefore, total depreciation was estimated to be \$2,881,094, resulting in a depreciated reproduction cost for the improvements of \$1,419,046. Adding the estimated site value of \$800,000, the appraiser determined a final value conclusion under the cost approach of \$2,200,000, rounded.

In developing the sales comparison approach to value, the appraiser selected five suggested comparable sales. The comparables are located in North Chicago, Gurnee and Waukegan, Illinois. The comparables are single-tenant buildings, but the report indicates comparables 2 and 4 could be used as multi-tenant buildings. The comparables are one-story industrial buildings of brick, brick and metal or metal exterior construction. The buildings range in size from 42,300 to 99,000 square feet of building area with sites ranging in size from 2.64 to 5.55 acres of land area,

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resulting in building to land ratios ranging from 29% to 49.6%. The age of comparable 1 was described as "older". Comparables 2 through 5 were built from 1970 to 1980. Comparable 2 had an addition constructed in 1989. Ceiling heights varied from 16 to 22 feet. Office areas ranged from 5.2% to 16.6% of total building area. The comparables have varying shipping and receiving facilities. Comparable 1 has a mix of 7 drive-in doors and docks; comparable 2 has 4 exterior docks, 2 interior recessed docks and 2 drive-in doors; comparable 3 has 1 exterior dock and five drive-in doors; comparable 4 has 1 interior dock and 11 drive-in doors; and comparable 5 has 3 exterior docks and 3 drive-in doors. Four comparables were described as having adequate parking like the subject and one comparable was described as having inferior parking. Four comparables have fire sprinkler protection. Functional utility was described as average or better. The properties sold from March 2006 to November 2008 for prices ranging from \$1,380,000 to \$3,386,875 or from \$29.46 to \$42.11 per square foot of building area including land.

On page 76 of the report, the appraiser made qualitative (+/-) adjustments to the sales for date of sale, building size, parking, condition, office space, building to land ratio, air conditioning, clear ceiling heights, exterior construction, sprinkler fire protection, functional utility, and utilities. Overall, comparable 1 had a positive adjustment and comparables 2 through 5 had a negative adjustment. The qualitative adjustments in grid format considered by the appraiser are found on page 76 of the report.

Based on the adjusted comparable sales, Schmitt determined the subject had a market value ranging from \$27.00 to \$32.00 per square foot of building area including land. Ultimately, the appraiser estimated the subject property had a value under the sales comparison approach of \$2,100,000 or \$28.16 per square foot of building area including land.

Schmitt next developed the income approach to value using four suggested industrial rental listings. The appraisal report indicated it was difficult to find available leases as of January 1, 2009 due to a lack of good verifiable rental data for similar properties in the subject's location. The rental listings are located in Waukegan, Gurnee or Zion, Illinois, but only limited descriptions were provided. The rental comparables' land to building ratio, exterior construction, use, and design were not disclosed. Comparable listing rental 1 is comprised of 54,084 square feet of available space within a 255,418 square foot building located in a superior industrial park. Comparable listing rental 2 is a 2005 industrial warehouse that contains 66,720 square feet of building area. The building has 25,000 square feet of air conditioned space and has a superior location than the subject. Comparable listing rental 3 is comprised of 100,000 square feet of available space within a 345,232 square foot building. Features include rail access, 26 foot ceiling heights, 20 docks with doors and a large parking lot. The property has 15 acres of land area. Comparable listing rental 4 is comprised of 50,000 to 150,000 square feet of warehouse space in a newer building. Features include 30 foot ceiling heights, 16 docks with doors, fire sprinkler protection and modern air conditioned office space. The property is situated on 8 acres of land area. The lease offering rates ranged from \$3.95 to \$5.35 per square foot of building area on a modified net or gross basis.

After considering adjustments to the rental offerings for differences to the subject for location, size, building type and functional obsolescence, the appraiser concluded a market rent for the subject of \$2.50 per square foot of building area on a net basis, resulting in a potential gross

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income of \$242,379 using 74,528 square feet of building area. The appraiser deducted 10% or \$18,632 for vacancy and collection loss to arrive at an effective gross income of \$167,688. The appraiser next deducted expenses for real estate taxes of \$4,440; \$745 for insurance; \$5,031 for management; \$3,500 for miscellaneous expenses and \$18,625 for reserves for replacement. Total expenses were estimated to be \$32,341 to arrive at a net operating income of \$135,347. Page 83 of the report depicts a detailed analysis of the expense amounts and their calculations.

The appraiser next estimated the capitalization rate to be applied to the subject's estimated net annual income. Using the band of investment method, the appraiser arrived at a rate of 9%. Capitalizing the net annual income by 9% resulted in an estimated value under the income approach of \$1,500,000.

Under reconciliation, the appraiser gave no significant weight to the cost approach and less weight to the income approach to value. The appraiser gave most consideration to the sales comparison approach to value. Therefore, Schmitt concluded the subject property had a market value of \$2,100,000 as of January 1, 2009.

Under cross-examination, Schmitt testified the ceiling heights vary throughout the subject building from 10, 14, 24 feet with one section having 40 foot ceiling heights. Schmitt agreed none of the comparable sales have 10 foot ceiling heights. Similar to the sales used by Siegel, Schmitt agreed none of the comparable sales are used to make a ferrite process in a kiln or punch press, but are used for manufacturing. Schmitt testified the subject property would have a limited market, but he did not think the property is severely limited that there could not be other manufacturing uses. Schmitt agreed the building would have to be retrofitted for modern use, but not all uses would be impeded. The testimony also disclosed the subject's 2010 and 2011 assessments were reduced to \$592,000 and \$610,540, respectively, based on application of township equalization factors. Zoning regulations were also discussed. The witness disagreed that he really did not know the specifics of the local zoning ordinance. Schmitt testified he could not determine whether the subject was in compliance with zoning because he was not provided with a plat of survey which should show setbacks. Schmitt agreed 97% of the subject's site is in a floodplain. Based on conversations with various unknown village officials, Schmitt disagreed that if the subject building was razed or substantially rebuilt, that it would require a special use permit from the village. He testified a building could be constructed in a floodplain, but was not permissible in a floodway.

In rebuttal, the appellant submitted a copy of the Village of Wadsworth Zoning Ordinance. The appellant objected to the \$800,000 land value conclusion contained in the board of review appraisal as speculative. The appellant argued 97% of the subject's site is in a floodplain and 77% of the site is located in a floodway. Based on the unbuildable condition of the property, the appellant maintains its request for a land assessment of \$204,408, but due to a possible miscalculation of the building size, the appellant agreed that the assessed valuation of the building should be minimally higher than the requested amount of \$253,925.

Under questioning, both appraisers testified the subject property was valued in its current configuration, fee simple interest, as value in exchange.

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After hearing the testimony and considering the evidence, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of the appeal. The property Tax Appeal Board further finds no reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The law in Illinois requires real property to be valued at fair cash value, estimated at the price it would bring at a voluntary sale. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480, 894 N.E.2d 400, 323 Ill.Dec. 633 (1<sup>st</sup> Dist. 2008). Correspondingly, fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). Fair cash value is synonymous with fair market value. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480 (1<sup>st</sup> Dist. 2008). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready, willing, and able to buy but not forced to do so to do. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in the record does not support a reduction in the subject's assessment.

In support of its contention of the correct assessment, the appellant submitted an appraisal estimating the subject property had a market value of \$1,350,000 as of January 1, 2009. The appraisal was prepared by Martin S. Siegel of S. Siegel & Associates, Ltd. However, at the hearing, Siegel modified the value conclusion to \$1,500,000 based on "new information" regarding the building size as requested by counsel. Appellant's counsel stipulated to a building size of 74,578 square feet of building area as calculated by the board review's appraiser and depicted on the subject's property record card maintained by Lake County Assessment Officials. The appellant's counsel further argued the subject's value is diminished due to zoning restrictions regarding the amount of buildable land due to the presence of a floodplain, flood way and wetlands, which prohibits the potential to expand or rebuild on the site. The Board of review submitted an appraisal estimating the subject property had a market value of \$2,100,000 as of January 1, 2009. The appraisal was prepared by Raymond J. Schmitt of R. J. Schmitt & Associates, Inc.

The Board finds that both appraisers indicated the property rights being appraised were the fee simple interest. The Board finds that both appraisers agreed that the highest use of the subject property as improved was for its current or existing industrial/manufacturing use. Considering these factors, the Board finds appellant's counsel's argument that the subject's value is diminished due to zoning restrictions regarding the amount of buildable land and the potential to expand or rebuild on the site is not supported by either expert witness or their respective value conclusions. The Board finds counsel's arguments are speculative in nature and not supported by any credible evidence in this record. Additionally, the Board finds counsel's arguments are further undermined by its own expert. The appellant's appraisal report under Highest and Best Use, legality of use, provides:

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The subject property is zoned L1, Light Industrial District as well as Ag, Agriculture District which allows for industrial uses. It appears that the subject property would represent a legal and conforming use under current zoning. (Siegel Appraisal, p.36).

Both appraisers described the subject as a being improved with an older industrial building with functional obsolescence due to its floor plan, varying ceiling heights and construction. Under the cost approach, both appraisers agreed the subject site has 30.49 acres, but had differing opinions regarding the amount of "usable" or "buildable" land. The appellant's expert witness calculated 19.20 acres of net usable land while the board of review's expert calculated a site of approximately 7-acres of net usable land area.

The Board finds Schmitt's estimate of land size of 7-acres or 304,920 square feet of net usable or buildable land to be more credible and better supported. The Board finds Schmitt reasonably considered and deducted approximately 23 acres of land area associated with the wetlands and floodway contained on the subject parcel. The Board finds unlike the Siegel appraisal, Schmitt's report contained detailed maps and credible documentation to support a net usable land area of 7-acres. (See pages 28, 29 and 33 through 39 of appraisal report). The Board finds that in this appeal, Siegel did not adequately consider the land contained in wetlands and floodway in calculating the subject's net usable site area of 19.20 acres. (See page 26 of appraisal). Siegel deducted only the amount of land associated with a forest preserve easement and water detention areas<sup>2</sup>. As a result, the Board finds the methodology employed by Siegel and the \$960,000 land value conclusion under the cost approach to be unpersuasive and less credible to that of Schmitt. In reviewing the land sales, the Board finds Siegel selected land sales, three of which had dissimilar zoning than the subject and one land sale that was considerably larger in size than the subject. The one similar land sale used by Siegel was an industrial zoned site that contained 8-acres of land area, but was located in a superior business park. It sold in July of 2008 for \$554,253 or \$69,291 per acre.

The Board further finds the land value conclusion determined by Schmitt to be better supported and more credible. The Board finds Schmitt selected four land sales, three of which had similar industrial zoning as the subject and were similar in size to the subject. These properties sold for prices ranging from \$280,000 to \$1,112,567 or from \$2.63 to \$4.57 per square of land area. The Board finds Schmitt appropriately adjusted the land sales for their superior location, utilities, zoning and date of sale in arriving at a value conclusion of \$800,000 or \$2.62 per square foot of net usable land area

The two appraisers also developed the depreciated reproduction cost approach to value. Siegel concluded a value of \$1,385,000 while Schmitt determined of value of \$2,200,000 inclusive of land. Neither appraiser placed significant weight on the estimate(s) of value due to the subject's age, configuration, functional utility and estimates of depreciation from all causes. However, in reviewing both value estimates under the cost approach, the Board finds Schmitt's analysis to be more detailed to that of Siegel. (See page 48 of Siegel appraisal and page 64 of the Schmitt appraisal). In addition, the Board finds Siegel's physical depreciation in the amount of 75% or

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<sup>2</sup> Under questioning, Siegel testified that the water detention area (Aerobic Lagoon Sewer Sanitation System) was integral to the building operations.

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\$3,200,079 is unpersuasive given the fact the subject had an addition constructed in 1995. The Board finds Schmitt's physical depreciation amount of 57% or \$2,451,080 is more credible in consideration of the subject's actual and effective age. As a final point, the Board finds Siegel utilized an incorrect building size for the subject property, which further undermines the credibility of the final value conclusion under the cost approach.

Both appraisers also developed an estimate of value using the income approach to value. Schmitt stated within his appraisal report that a search for recent leases of industrial space similar to the subject property resulted in insufficient comparable data to utilize the income capitalization approach; therefore, he utilized four rental listings in developing the income approach to value. Siegel also used four rental comparables. The Board finds both appraisers concluded similar rental rates of \$2.75 and \$2.50 per square foot of building area, respectively. However, again, Siegel used an incorrect building size, thereby, underestimating the subject's potential gross income. Both appraisers utilized similar vacancy rates and most expenses, but differed in the amounts allocated for reserves for replacement. Siegel calculated reserves in the amount of \$.50 per square foot of building or \$34,392 because the building is near the end of its economic life. However, page 51 of the appraisal indicates typical reserves for replacement was \$.05 to \$.15 per square foot, depending on the structure. Schmitt calculated reserves for replacement in the amount of \$.25 per square foot or \$18,625 using the correct building size of 74,528 square feet. The appraisal report indicates the owner of the subject property stated some sections of the roof had been reconditioned. Given these facts, the Board finds Schmitt's calculation of reserves for replacement is better supported resulting in a net operating income of \$135,347. Both appraisers used the same capitalization rate of 9%. Based on this analysis, the Board finds Schmitt's value conclusion is more persuasive and better reflects the subject's fair market value at \$1,500,000 under the income approach to value.

Both appraisers developed the sales comparison approach to value and gave primary weight to this method in estimating the market value of the subject property. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Chrysler Corporation v. Property Tax Appeal Board, 69 Ill.App.3d 207 (1979), the court held that significant relevance should not be placed on the cost approach or income approach especially when there is market data available. In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach. In developing the sales comparison approach Siegel used four suggested comparable sales, while Schmitt utilized five suggested comparable sales. Siegel initially concluded an estimated market value of \$1,375,000 or \$20.00 per square foot of building area including land using 68,785 square feet of building area. However, at the hearing Siegel modified the value opinion to \$1,500,000 or \$20.11 per square foot of building area including land based on a stipulated building size of 74,578 square feet. Schmitt concluded an estimated market value of \$2,100,000 or \$28.16 per square foot of building area including land.

The Board gave less weight to the opinion of value concluded by Siegel. The Board finds Siegel utilized an incorrect building size for the subject property before modifying his opinion of value at the hearing, which again undermines the veracity and validity of the appraisal report. The Board finds the appellant's appraiser failed to provide any new calculations under the sales comparison approach to support the modified opinion of value. Additionally, the Board gave

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little weight to comparables 1 and 3 used by Siegel. Comparable 1 is a smaller industrial building located on a considerably smaller .78 acre site than the subject's 7-acres of net usable land area. Comparable 3 is a multi-tenant building, unlike the subject's owner occupied single-tenant use. The two more similar sales used by Siegel sold for unadjusted prices of \$1,800,000 and \$1,167,000 or \$21.06 and \$25.28 per square foot of building area including land. Even after considering logical adjustments to these two more similar comparables for differences when compared to the subject, the Board finds Siegel's modified value conclusion of \$1,500,000 or \$20.11 per square foot of land area is not supported.

The Board finds the value conclusion determined by Schmitt to be better supported than Siegel's value conclusion based on the comparable sales and testimony elicited at hearing. In reviewing the comparables, the Board finds they are more similar to the subject in single user tenancy, age, parking area, condition, net usable land area, percentage of office space, docks and overhead doors, clear ceiling heights, utilities and functional utility. These properties sold for unadjusted sale prices ranging from \$1,380,000 to \$3,386,875 or from \$29.46 to \$42.11 per square foot of building area including land. The Board finds the board of review's appraiser made competent, logical and reasonable qualitative adjustments (see page 76 of appraisal report) to the comparables for differences when compared to subject in arriving at the final opinion of value of \$2,100,000 or \$28.16 per square foot of building area including land.

Considering the totality of the evidence in this record and giving more deference to Schmitt's value conclusion under the sales comparison approach, the Board finds that the subject property's estimated market value of \$1,955,794 or \$26.25 per square foot of building area including land as reflected by its assessment is supported. Therefore, the Board finds no reduction in the subject's assessment is warranted.

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<b>APPELLANT:</b>	<b><u>Valspar Corporation</u></b>
<b>DOCKET NUMBER:</b>	<b><u>06-01789.002-I-3 thru 06-01789.005-I-3</u></b>
<b>DATE DECIDED:</b>	<b><u>April, 2013</u></b>
<b>COUNTY:</b>	<b><u>Kankakee</u></b>
<b>RESULT:</b>	<b><u>Reduction</u></b>

The subject property consists of 4 parcels of land containing approximately 8.241-acres of land area improved with a part one-story, part two-story and part three-story industrial building. Original construction of the subject began in 1890 with a 20,250 square foot building. Various additions were constructed throughout the 1960's and an additional 8,775 square foot building was added in 2003. The subject contains a total of 184,255 square feet of building area.<sup>1</sup> Original construction from 1890 to 1930 consisted of post and beam materials. Later additions consisted of concrete construction. Recent additions are steel frame and siding. Clear ceiling heights range from 10 to 22 feet with interior walls divided into sections by concrete blocks and exposed walls with metal deck ceilings. The subject has concrete floors and is divided into a reception area, open office area and private offices, which are carpeted or contain vinyl tile with gypsum board walls. These areas have suspended acoustical tiles with recessed fluorescent lighting. The air-conditioned office areas contain a total of 14,432 square feet of building area or 9.2% of the total building area. In addition, the plant has a wet sprinkler system, contains several freight elevators, asphalt drives, asphalt parking and loading docks. The subject, commonly known as Valspar Corporation, is located in Kankakee Township, Kankakee, Illinois.

The appellant, through counsel, appeared before the Property Tax Appeal Board contending overvaluation as the basis of the appeal. In support of this argument the appellant submitted a summary appraisal report prepared by J. Edward Salisbury of Salisbury and Associates, Incorporated. Salisbury estimated the subject property had a market value of \$630,000 as of January 1, 2006. Salisbury was called as a witness on behalf of the appellant.

Salisbury is the principle of Salisbury and Associates, Inc., since starting the firm in 1991. From 1975 through 1977 he worked with the appraisal division of the Illinois Department of Local Government Affairs and from 1977 through 1991, he was a hearing officer with the Property Tax Appeal Board and served as Executive Hearing Officer during his last five years with the Board. He has been appraising real estate for approximately 35 years and has the Certified Illinois Assessing Officer ("CIAO") designation through the Illinois Property Assessment Institute and the Certified Assessment Evaluator "CAE" designation through the International Association of Assessing Officers. He is licensed as a certified general real estate appraiser with the State of Illinois. He has appraised hundreds of industrial properties since starting his own firm and primarily evaluated industrial properties when he worked with the Property Tax Appeal Board.<sup>2</sup>

Salisbury identified Appellant's Exhibit No. 1 as his appraisal of the subject property. The purpose of the appraisal was to estimate the subject's market value as of January 1, 2006.

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<sup>1</sup> Appraiser, Salisbury, estimated the subject's size to be 156,787 square feet of building area. Appraiser, Brorsen, estimated the subject's size to be 184,255 square feet of building area.

<sup>2</sup> Salisbury was tendered and accepted as an expert in the valuation of industrial properties without objection.

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In describing the subject, Salisbury testified that the subject site is comprised of four separate parcels that are relatively flat. The largest parcel contains a little over 4-acres with the other three being approximately one-acre each. The buildings occupy the majority of the site with the subject being land locked due to other land uses surrounding it. Salisbury testified that there is no vacant land available, which prohibits expansion, even if the owners wanted to. The subject is zoned I-2, heavy industrial. Salisbury explained that Valspar, which manufactures paint products and additives, currently occupies the property. Salisbury appraised the subject as fee simple interest, unencumbered. He described the subject's environs as being located in the northern part of Kankakee, an older developed area with residential properties around it. The subject was described as having a railroad track on one side and a cemetery just north of it, with other industrial properties and commercial properties in close proximity. Salisbury testified that the market for industrial properties started going down in the mid 1990's because industries were moving from the Midwest to the southern states, mainly for cheaper labor. In addition, Salisbury testified that many industries were leaving the country and relocating to Mexico and Asia. In his opinion, manufacturing industrial plants have been on a decline since the mid 1990's.

In describing the subject's marketing area, Salisbury testified that the subject would have to be marketed nationally because it has over 100,000 square feet of building area. He described the subject as being a very old industrial facility that is also unique in that it is a multi-story complex with an unusual design. Because of these features, Salisbury opined that the marketing time would increase and be from 18 months to 2 years. Salisbury testified that two main things drive the value of the subject property, one is age. Salisbury stated that most complexes with a weighted age of approximately 65 years have been torn down. Second is the multi-story aspect of the subject. Salisbury testified that in his 15 years of experience with the Property Tax Appeal Board, he has never seen a sale involving a multi-story industrial building sell for more than \$5 a square foot, due to virtually no demand.

Salisbury explained that the subject contains approximately 156,000 square feet of building area, with 85% being two or three-stories, and the vast majority of that being three-story. The multi-story buildings are all connected and were built in stages between 1890 and 2003. Salisbury described the subject as multi-storied buildings that were built at different elevations, which in some cases required ramps to get from the floor of one building to same floor on another building, because they were not even in height. During his inspection, Salisbury found some of the buildings narrow by industry standards with small bay spacing and low clear ceiling heights. Salisbury described buildings 1, 2 and 3 as being part of the original structure made of wood construction with wooden floors. Salisbury testified that the wooden floors have limited load capacities which create problems because of the weight loads, and therefore, no manufacturing occurs in those buildings. Instead, these buildings were used for offices or general storage. Site improvements included sidewalks; concrete drives to the loading docks, an asphalt parking lot, exterior lighting and cyclone fencing and a rail spur in the back of the property. Salisbury testified that he utilized a spreadsheet provided by the owners to determine each building's age. From the same spreadsheet, which also indicated the size, he added the size of each building together and utilized a percentage of each building compared to the total size of the improvements to calculate a weighted age for each building. The calculation of weighted age (65 years, rounded) is found on page 28 of his appraisal report. Salisbury verified a portion of the spreadsheet measurements with measurements he had taken during his inspection, and they

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were correct. Salisbury testified that the subject's highest and best use as vacant was continued use as industrial property and the highest and best use as improved was also industrial use.

Salisbury stated that he considered the three traditional approaches to value in estimating the subject's value; however, given the uniqueness of the subject property, its age and configuration, he concluded the sales comparison approach was the only approach that would have any merit. Therefore, he did not utilize the cost or income approaches to value.

Even though Salisbury did not utilize the cost approach to value, Salisbury found functional obsolescence existed because of product flow problems. For instance, he found problems in the interconnected design of the buildings, the narrowness of the buildings and bay space, wooden floors and low ceiling heights, prevent racking in most areas except the warehouse built in 2003. In addition, he found economic obsolescence because the subject was generally surrounded by residential property as opposed to being in an industrial park.

Under the sales comparison approach, Salisbury utilized six sales and four listings (Appellant's Exhibit 1, page 58).<sup>3</sup> Salisbury testified that his search for multi-story sale comparables included areas outside of Illinois. Some of his sales include only a portion of multi-story buildings; generally his sales and listings are one-story because there are a limited number of multi-story industrial building sales. He next looked for older properties in equal, better or similar locations. Salisbury testified that listings set the upper limit of value. The six sales he utilized were located in Decatur, Hillsboro, Clinton and Rockford, Illinois. The four listings were located in Rockford or Princeton, Illinois. The comparables ranged in size from 64,761 to 2,197,775 square feet of building area; ranged in age from 39 to 101 years old, contained from 2.31 to 153 acres of land area, had land-to-building ratios from 1.10:1 to 8.98:1, various clear ceiling heights ranging from 10 to 40 feet with office space ranging from 0.72% to 20.65% of total building area. Six of the comparables sold from November 2000 to December 2005 for prices ranging from \$480,000 to \$1,750,000 or from \$0.23 to \$4.36 per square foot of building area, including land. The four listings each had a listing date in November 2006 and prices that ranged from \$320,000 to \$2,600,000 or from \$2.33 to \$6.84 per square foot of building area, including land. Qualitative adjustments were made to the comparables for date of sale or listing, location, size, land-to-building ratio, age and/or condition. Comparables #1, #2 and #6 and each of the listings required a negative overall adjustment, while comparable #3 required a positive adjustment. Salisbury found no adjustment was required for comparables #4 and #5. Salisbury testified that he attempted to verify each sale by speaking with the seller, buyer and/or broker of the property. Salisbury stated that he found enough sales of similar competing properties to apply the comparable sales approach with a high degree of confidence in his estimation of the subject's market value. Based on the comparable sales and listings, Salisbury estimated a market value for the subject of \$4 per square foot of building area, including land, or \$630,000, rounded, using 156,787 square feet as the subject's size. Based on this evidence, the appellant requested a reduction in the subject's assessment commensurate with the estimate of value contained in the appraisal report.

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<sup>3</sup> A corrected grid was allowed into the record as Appellant's Exhibit 2. Salisbury testified that when preparing the report some comparables were deleted from the spreadsheet causing a misalignment of the data for each property. The data was not changed, only realigned correctly to each reported sale or listing.

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During cross examination, Salisbury was questioned on various errors found in his appraisal report. The errors included leaving blank the date of purchase of the subject by Valspar;<sup>4</sup> including an incorrect definition of market value for federally insured financial institutions, misstating the intended use of the appraisal, and various changes made to the sales grid analysis. Salisbury acknowledged that he analyzed the cost and income approaches to value, but did not use them in his appraisal report. Salisbury further acknowledged that his sale comparable #1 was not an arms-length transaction, because the buyer and seller used an appraisal to value the property instead of listing it for sale on the open market. Salisbury was next questioned on various adjustments he made to the comparables. Salisbury explained that he did not include the income approach to value in his appraisal because with older buildings there are more problems with environmental issues, such as asbestos, which prohibit who the building could be rented to and for how much. Salisbury testified that he looked for rentals of multi-story space and did not find any. Salisbury admitted that only two of his sale comparables had only a portion of two-story buildings and sale #2 had two-story and four-story buildings, but the majority was one-story. In regards to the listings, #2 and #3, which were multi-story buildings, he made a condition adjustment for the number of stories or lack thereof in his analysis. During questioning regarding his adjustments for location, Salisbury testified that he looks at four levels. He first looks at whether a property is located in a metropolitan area like Chicago, St. Louis or Kansas City. He stated that second tier communities are larger communities that are located on an interstate and have a decent employment base like Peoria, Decatur, Springfield, Champaign-Urbana and Bloomington-Normal. He next looks at smaller communities located on an interstate because of access to transportation modes they need. Finally, he looks at the locations of industrial properties in small communities not located on an interstate. These properties would be least desirable. He considers each of the sale comparables he used as being similar in location to the subject. Salisbury testified that Clinton and Hillsboro would be inferior to the subject regarding location; Princeton would be good as far as communities in the area, but maybe a little less desirable, with Decatur and Rockford being equal to or better than the Kankakee area. Salisbury considered sale #2, which sold for \$0.23 per square foot of building area, including land, to be an outlier because of its significantly larger size. Salisbury explained that the larger the size, the less desirable it becomes in the marketplace. Second, was its age, particularly with its multi-building complex. Salisbury explained that a potential buyer would have concerns regarding environmental issues because of possible cleanup costs associated with hazardous materials. Salisbury testified that he would never give a draft of his appraisal report to a client for review and that it would be improper and a violation of the Uniform Standards of Professional Appraisal Practice.

During re-direct, Salisbury testified that in today's market, modern paint plants are typically one-story with a mezzanine level to fill the hoppers. A gravity feed is still used with the equipment set up higher, similar to his sale #4. Other than the Hillsboro property, Salisbury felt his other sales had equal access to the interstate highway system, which he felt was important for industrial manufacturing.

The board of review submitted its "Board of Review Notes on Appeal" wherein the subject's total assessment of \$1,090,572 was disclosed. The subject's assessment reflects a market value of approximately \$3,255,439 or \$17.67 per square foot of building area, including land, using the

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<sup>4</sup> Borsen testified Valspar acquired the subject property from Mobil Corporation sometime in the 1980's.

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2006 three-year average median level of assessments for Kankakee County of 33.50% as determined by the Illinois Department of Revenue. The Notice of Final Decision of the Kankakee County Board of Review for 2006 and 2007 depict assessment values for the subject parcels under appeal as follows:

<b>PARCEL NUMBER</b>	<b>LAND</b>	<b>IMPRVMT</b>	<b>TOTAL</b>
16-09-33-103-001	5,141	0	\$5,141
16-09-32-206-009	23,986	1,048,018	\$1,072,004
16-09-32-213-010	3,361	0	\$3,361
16-09-32-214-013	6,194	3,872	\$10,066

In support of the subject's assessment, the board of review submitted property record cards and various evidence used at the local board of review hearing as its evidence. David West, the Kankakee Township Assessor, was called as a witness. West has been the Kankakee Township Assessor since 1993. He has the CIAO designation. West testified that Valspar purchased the subject in 1984 from Mobil Chemical for \$3,648,776. West further testified that Valspar entered into a redevelopment agreement with the City of Kankakee and the Kankakee School District for a Tax Increment Financing district designation. West stated Valspar wanted to relocate a loading dock, build a new loading dock, a new truck scale in 1992 and a new metal building. The agreement was that any increase in valuation paid would be rebated to the owner. The building permit was used as a basis to value the new building with 2% or 3% increases every year. The redevelopment agreement was marked as intervenors' Exhibit 3. West testified that the improvements were made from 1992 until 2005. West testified that the loading dock and a small addition to the existing building were built in September 1999 with a building permit of \$420,000. Based on this evidence, the board of review requested the subject's assessment be reduced to reflect the market value found in Andrew Brorsen's appraisal of \$2,764,000.<sup>5</sup>

During cross-examination, West acknowledged that the starting value for the subject was taken from what his predecessor had the subject valued at and then he added to it based on an agreement between Valspar, the City of Kankakee and the school district to use the values shown on the building permits. Subsequent to that, he increased the value from 2% to 3% per year. West agreed the proper method for assessing property is not to use the estimated costs as shown on the building permits. Based on this evidence, the board of review deferred to the intervenors for further presentation of evidence and oral testimony.

A redevelopment agreement (Intervenors' Exhibit 3), was discussed prior to intervenors presenting direct testimony. Intervenors' counsel argued that the redevelopment agreement, between the City of Kankakee and Valspar required the City of Kankakee to adopt a bond ordinance providing for the issuance of bonds requiring a levy of taxes that would be abated by the pledge of up to 100% of the incremental real estate taxes generated in the redevelopment project. Counsel argued that the agreement presumes assessment increases to take place which would justify taxes that would enable amortization of the bonds. Intervenors argued that the parties to the agreement recognized an agreed upon cost going into the project. Appellant pointed out the redevelopment agreement pertains to a project area, the Tax Increment Financing

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<sup>5</sup> The "corrected appraisal."

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district, not just Valspar. Intervenors argued that pursuant to the agreement between Valspar, the City of Kankakee and Kankakee School District, Valspar was required to contribute \$300,000 and the City of Kankakee was required to contribute \$600,000 to the project.<sup>6</sup>

The intervenors, City of Kankakee and Kankakee School District No. 111, called Andrew Brorsen as their first witness. Brorsen has been a State of Illinois licensed real estate appraiser since 1991.<sup>7</sup> Brorsen has received the Member Appraisal Institute, Senior Residential Appraiser, Residential Member and Senior Real Property Appraiser designations from the Appraisal Institute along with the Accredited Rural Appraiser designation from the American Society of Farm Managers and Rural Appraisers. In 1994 he was president of the Chicago Chapter of the Appraisal Institute and in 2007 he was president of the Illinois Society of Farm Managers and Rural Appraisers. In addition, he has served six years on the Illinois Appraisal Board and taught numerous classes. He is currently the co-owner of Brorsen Appraisal Service, P.C. in Kankakee. He has prepared over 3,500 appraisals over a 37 year span covering residential, commercial, industrial, agricultural and special purpose properties. Further, he has appraised over 100 light manufacturing and warehouse facilities.

Brorsen did an interior and exterior inspection of the subject on April 28, 2008. Brorsen testified that the inventory of industrial property in Kankakee County has increased since 1998 with the vacancy rate remaining relatively low. In January 2006 the vacancy rate was calculated at just under 4%.

Brorsen calculated a different square footage for the subject than Salisbury used. Brorsen physically measured the perimeter of the buildings on two occasions along with using information he obtained through assessment data. In some cases his measurements matched and in some cases it did not. Brorsen stated the subject contains 19 buildings with three stories in the original sections and a couple of two stories and one story in the remaining sections. Brorsen further testified that the basement area is only under the original sections. In addition, the subject contains 14,400 square feet of office space or 7.8% of gross building area. Brorsen explained that a section was added to the subject in 2001 because the original dock caused semi trucks to extend over two lanes of traffic when products were being shipped or delivered which caused a dangerous situation. Therefore, a new dock was added setting it further back. Brorsen testified that Valspar paid \$1.2 million to construct the new addition based on two building permits and newspaper articles. Brorsen opined that the new truck docks and warehouse could be severed from the property and sold separately. Brorsen found the subject contained a vertical manufacturing system with raw products elevated to the upper floors where they are mixed and dropped by gravity to a mixing process and then processed into the final product. He has found other properties in Kankakee that use the same process, such as, Armstrong World Industries and Bunge Edible Oils. Brorsen has also appraised the Armstrong facility. Brorsen appraised the subject property in fee simple interest. It was his opinion that the highest and best use of the subject as if vacant was for industrial use of the land. As improved, he felt the highest and best use was its present use as a manufacturing facility. In his opinion, the fee simple fair market

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<sup>6</sup> The redevelopment agreement, intervenors' Exhibit 3, was allowed into the record to be given its appropriate weight.

<sup>7</sup> Brorsen was accepted as an qualified expert in real estate valuation without objection and an updated curriculum vitae was entered into the record (Intervenors' Exhibit 4).

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value of the subject as of January 1, 2006 is \$2,764,000 with no change in value for January 1, 2007.

Brorsen testified that he only used the sales comparison approach when he performed his valuation estimate. He did not use the income approach because the subject is a mixture of physical uses, both manufacturing and warehouse, and various ages and so he felt the value indicated by the income approach would be very weak because of the necessary assumptions one would have to make to derive rental rates for the various components of the subject property. Brorsen further testified that he would have had to assume how much the older manufacturing space would bring for rent and since the subject was an owner/user type of property any rental space data he had may have not been a comparable three-story building. Brorsen testified that assuming various rental rates would not necessarily mean that the total property would rent to a single user, which created a problem. Brorsen further testified that he did not perform a cost approach analysis because that method is generally applicable to newer improvements. He stated that as a property ages, the depreciation estimates increase and their reliability of the value indication would be weakened. Brorsen calculated the weighted actual ages of the subject buildings to be 65 years old with some sections being over 100 years old. Brorsen did, however, perform a land valuation.

Brorsen examined 8 industrial zoned land sales located in the City of Kankakee. Brorsen opined that the subject's land value was \$282,000 or \$35,000 an acre as of January 1, 2006, and which remained the same for January 1, 2007.

Under the sales comparison approach, Brorsen utilized four sales, all of which he previously appraised, and were located in the Kankakee market. The sale comparables consisted of light manufacturing/warehouse properties ranging in size from 52,255 to 144,000 square feet of gross building area; office space ranging from 2.5% to 11.0% of total building area; gross land area ranging from 4.98 to 14.11 acres and land to building ratios ranging from 2.37:1 to 10.30:1. Brorsen's appraisal report depicts the subject improvements had a weighted age of approximately 62 years as of the effective date of the appraisal. The weighted ages of the comparables was from 25 to 58 years at the time of sale. The individual ages were not disclosed in the report. The comparables sold from December 2003 to August 2006 for prices ranging from \$825,000 to \$3,250,000 or from \$9.02 to \$23.92 per square foot of gross building area, including land. Comparable #1 received a negative adjustment for size, superior land contribution, age and condition. Comparable #2, located within 1 mile of the subject along the same railroad track, received a negative land contribution adjustment because of its elongated shape. This comparable received a positive adjustment for time of sale which occurred 19 months prior to the effective date of his appraisal of the subject. Brorsen opined that industrial values increased from 2004 to 2006. Comparable #2 was adjusted downward for age and upward for office space. Comparable #3 was located in Peotone, within 2 to 3 miles of Kankakee County. Comparable #4 was adjusted for date of sale, land characteristics and age. Overall, comparable #1 received a negative adjustment; comparable #2 received a positive adjustment, with comparables #3 and #4 receiving a negative adjustment. Brorsen applied a \$15 per square foot value to the subject using 184,255 square feet of building area. Brorsen testified that the subject's fair market value as of January 1, 2006 was \$2,764,000 and remained the same for 2007.

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Brorsen next testified regarding a draft appraisal that was submitted by counsel into the record (Intervenors' Exhibit 1-A). In the draft appraisal, Brorsen included two sales that were ultimately left out of the final appraisal. Brorsen testified that he originally began with six sales and submitted that to counsel. Brorsen testified that he was unaware that the draft appraisal was submitted. After consultations with counsel, and further examination of the appraisal, he felt the two sales were too dated to be a reliable indicator of value, so they were removed. Brorsen further testified that it was his decision to remove the two sales from the final version of his appraisal. In his opinion, Brorsen felt there were sufficient local sales to avoid extension of the market. His comparables ranged from less than a quarter mile from the subject to 19 miles away in Peotone.

On cross-examination, Brorsen agreed that the original appraisal submitted into evidence depicting an estimate of value for the subject of \$2,027,000 as of January 1, 2006 (Intervenors Exhibit 1-A) does not state on the document that it is a draft appraisal. Brorsen testified that the 35% increase in value from the original "draft" appraisal and the final appraisal which depicted an estimate of value for the subject of \$2,764,000 as of January 1, 2006 was not caused by his initial review process. Brorsen testified that the only difference between the two appraisal reports are the two comparable sales that were removed from the final version. Brorsen admitted that he signed the certification page on the draft appraisal. Brorsen testified that the draft appraisal was submitted to counsel for review. Brorsen admitted that the two comparables were removed from the original appraisal after consultation with counsel, but, that was not the reason they were removed. Brorsen further admitted that his wife, who reviews the appraisals before they go out, is not listed on the appraisal certification page as providing any assistance in preparation of the appraisal, even though she has been an appraiser for over 30 years. Brorsen agreed that he did not mention in his appraisal report about the different levels of the buildings which required ramps to connect to each other, or that the second and third story floors have reduced load capacities as compared to the first floor. Brorsen was further questioned on the various adjustments or lack thereof regarding his sales comparables. Brorsen agreed that none of his comparable sales included multi-story industrial buildings; all had a land to building ratio higher than the subject; all had a weighted age less than the subject; and none had 19 buildings, like the subject, or even close to that many.

After hearing the testimony and reviewing the record, the Property Tax Appeal Board finds that it has jurisdiction over the parties and the subject matter of this appeal. The Board finds that a reduction in the subject's assessment is warranted.

The appellant contends the market value of the subject property is not accurately reflected in its assessed valuation. The law in Illinois requires real property to be valued at fair cash value, estimated at the price it would bring at a voluntary sale. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480, 894 N.E.2d 400, 323 Ill.Dec. 633 (1<sup>st</sup> Dist. 2008). Correspondingly, fair cash value is defined in the Property Tax Code as "[t]he amount for which a property can be sold in the due course of business and trade, not under duress, between a willing buyer and a willing seller." (35 ILCS 200/1-50). Fair cash value is synonymous with fair market value. Cook County Board of Review v. Illinois Property Tax Appeal Board, 384 Ill.App.3d 472, 480 (1<sup>st</sup> Dist. 2008). The Supreme Court of Illinois has construed "fair cash value" to mean what the property would bring at a voluntary sale where the owner is ready, willing, and able to sell but not compelled to do so, and the buyer is ready,

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willing, and able to buy but not forced to do so. Springfield Marine Bank v. Property Tax Appeal Board, 44 Ill.2d 428 (1970). When market value is the basis of the appeal the value of the property must be proved by a preponderance of the evidence. National City Bank of Michigan/Illinois v. Illinois Property Tax Appeal Board, 331 Ill.App.3d 1038 (3<sup>rd</sup> Dist. 2002). The Board finds the evidence in the record supports a reduction in the subject's assessment.

As an initial matter, the Board finds the 2006 record discloses that pursuant to Property Tax Appeal Board rule 1910.60(f) (86 Ill.Adm.Code §1910.60(f)) the intervenors were granted a "Final" extension of 90-days to submit evidence on May 21, 2008.<sup>8</sup> On July 21, 2008 intervenors timely filed an appraisal (hereinafter "Draft Appraisal," Intervenors' Exhibit "1-A") for the subject property estimating a value for the subject of \$2,027,000 as of January 1, 2006. A cover letter attached to the "draft appraisal" indicated a value for the subject of \$2,764,000.

On September 9, 2008 the Property Tax Appeal Board, by letter to all counsel of record and the board of review indicated that the filing period for submission of evidence was closed. Thereafter, on March 26, 2009 intervenors, unilaterally and without leave, filed a "corrected appraisal" (Intervenors' Exhibit "1") of the subject property estimating a value for the subject of \$2,764,000 as of January 1, 2006.

This filing sequence was addressed by the parties at hearing. Counsel for the intervenors explained that a "draft appraisal" was inadvertently included in the original submission of evidence, which error was not discovered until approximately 7-months later. Appellant's counsel contended that the "draft appraisal" did not indicate in any manner that it was only a draft and that the "corrected appraisal" was not timely filed. Counsel further objected to the Board's consideration of the "corrected appraisal" in its analysis regarding the 2006 assessment year. The Administrative Law Judge reserved ruling on the admission of intervenors' Exhibit 1, the "corrected appraisal."

The appraiser, Andrew Brorsen, MAI, SRA of Brorsen Appraisal, P.C., testified that the "draft appraisal" included two sales not included in the "corrected appraisal." Upon removing the two sales, the mean indicated a value closer to \$15 a square foot rather than \$11 per square foot. This change required a change in the weighted unit price which resulted in an increase in the subject's estimate of value from \$2,027,000 to \$2,764,000 as of January 1, 2006.

Property Tax Appeal Board rule 1910.60(f) states in relevant part:

Extensions for Filing Additional Evidence: If the intervening party is unable to submit the additional written or documentary evidence with the Request to Intervene, it must submit a letter requesting an extension of time to file additional written or documentary evidence with the Request to Intervene. Upon receipt of such a request, the Board shall grant a 30 day extension of time for the filing of written or documentary evidence. This shall not include an extension of time to file a Request to Intervene or resolution. The Board shall grant additional or longer extensions for the filing of written or documentary evidence for good cause shown. Good cause may include but is not limited to the inability to submit evidence for a cause beyond

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<sup>8</sup> Intervenors were granted a total of 240-days extension of time in which to file evidence.

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the control of the intervening party, such as the pendency of court action affecting the assessment of the property or the death or serious illness of a valuation witness. Without a written request for an extension, no evidence will be accepted after the Request to Intervene is filed.

(86 Ill. Adm. Code §1910.60(f)) (Emphasis added)

The Board finds intervenors evidence was due 90-days from May 21, 2008 (August 20, 2008). Intervenors timely filed their "draft appraisal" on July 21, 2008. Submission of evidence was closed on September 9, 2008. Intervenors unilaterally and without leave to do so filed a "corrected appraisal" on March 26, 2009, 198-days after the evidence herein was closed by letter from the Property Tax Appeal Board. The Board further finds the "corrected appraisal" was sent by the intervenors to the Kankakee County Board of Review and the Kankakee County Supervisor of Assessments. There is no record evidence whether the appellant was served on March 26, 2009 with a copy of the "corrected appraisal."

The Board finds that substantial changes were made in the "corrected appraisal" which was untimely filed in this matter, although the cover letter included with the "draft appraisal" represented a final value estimate of \$2,764,000 as of January 1, 2006, even though the attached "draft appraisal" depicted an estimated value of \$2,027,000. The Board finds consideration of the "corrected appraisal" in this decision is prejudicial to the appellant, not timely filed and in violation of the Property Tax Appeal Board rules. Therefore, the estimate of value contained in intervenors' Exhibit 1, the "corrected appraisal" will not be considered in this decision.

However, assuming arguendo it could be considered, the Board finds the "corrected appraisal" is not credible because it was provided to counsel of record for the intervenors and subsequently changed after consultation with counsel. Brorsen testified that the changes were made upon closer examination; however, the Board finds this explanation suspect at best. The Board finds a certified estimate of value for the subject was presented by Brorsen for January 1, 2006 on two different appraisals on two different dates. The Board further finds intervenors' Exhibit 1-A ("draft appraisal") was not stamped or otherwise clearly indicated on the report itself that it was a "draft." The Board finds the estimation of value contained in the "corrected" appraisal was subsequently increased by \$737,000 only after consultation with counsel. Brorsen testified that the unit price changed from \$11 a square foot to \$15 dollars a square foot after removal of two dated sales comparables. The Board finds this explanation and analysis is unsupported in this record. Further, the transmittal letter attached to the "draft" appraisal, dated July 11, 2008, states "[i]n accordance with our agreement, we are transmitting to you a real estate appraisal of the above referenced property, hereafter called the subject property. . . . It is assumed the report will be submitted by the client to PTAB in reference to the above docket number." In summary, the Board finds the "corrected" appraisal was not timely submitted into this record pursuant to Property Tax Appeal Board rules, made substantial changes in the estimation of value, is prejudicial to the appellant, and unfairly puts the appellant at a substantial disadvantage in this proceeding. The "corrected" appraisal and "draft" appraisal will, however, be given their appropriate weight regarding the credibility of Brorsen's analysis and testimony.

In support of its contention of the correct assessment, the appellant submitted an appraisal estimating the subject property had a market value of \$630,000 as of January 1, 2006. The

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appraisal was prepared by J. Edward Salisbury of Salisbury & Associates, Inc. The board of review submitted its "Notes on Appeal" disclosing an assessment of \$1,090,512<sup>9</sup> which reflects a market value of \$3,255,260. Intervenors submitted an appraisal estimating the subject property had a market value of \$2,027,000 as of January 1, 2006. The appraisal was prepared by Andrew Brorsen of Brorsen Appraisal Service, P.C. The Board finds the subject's assessment reflects an estimated value higher than both estimates of value prepared by each appraiser herein and a reduction is warranted.

Intervenors submitted a copy of a redevelopment agreement (Intervenors' Exhibit 3) at the hearing. The redevelopment agreement between Valspar and the City of Kankakee required a bond ordinance in accordance with the Tax Increment Financing statutes. It required the City of Kankakee to issue bonds requiring a tax levy that was to be abated by the pledge of up to 100% of the incremental real estate tax generated in the redevelopment project area. Counsel for intervenors argued that Salisbury should have considered the redevelopment agreement prior to reaching his conclusion of value. It was further argued that Brorsen considered the redevelopment agreement when he estimated the subject's fair market value. The Board accepted the redevelopment agreement into the record; however, the Board gave this agreement little weight in its decision. The Board finds the redevelopment agreement does not, in and of itself, determine the subject's fair market value and/or determine the subject's assessment. The Board finds Section 9-145 of the Property Tax Code (35 ILCS 200/9-145) states in relevant part:

Statutory level of assessment. Except in counties with more than 200,000 inhabitants which classify property for purposes of taxation, property shall be valued as follows:

- (a) Each tract of lot of property shall be valued at 33 1/3% of its fair cash value.
- (b) Each taxable leasehold estate shall be valued at 33 1/3% of its fair cash value.
- (c) Each building or structure which is located on a right of way of any canal, railroad or other company leased or granted to another company or person for a term of years, shall be valued at 33 1/3% of its fair cash value. . . .

(35 ILCS 200/9-145)

The Board finds pursuant to Section 35 ILCS 200/9-145 of the Property Tax Code, the subject shall be assessed at 33 1/3% of its fair cash value and not based on an agreement between the parties such as the redevelopment agreement. Further, the Board finds both appraisers appraised the subject property in fee simple absolute, which indicates that the redevelopment agreement should not be considered in valuing property. Therefore, the redevelopment agreement was given little weight in the Board's final analysis.

The Board finds that both appraisers indicated the property rights being appraised were the fee simple interest. The Board finds that both appraisers agreed that the highest and best use of the subject property as improved was for its current or existing industrial/manufacturing use.

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<sup>9</sup> This amount represents the total assessment for four parcels. Parcel number 16-09-33-101-001 was withdrawn.

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Both appraisers described the subject as being improved with 19 buildings varying from one-story to three-story. The buildings ranged in age from 5 to 116 years old. Both appraisers agreed the subject was basically unique in that it is a vertical feed manufacturing plant with varying floor levels and connecting ramps. Both appraisers utilized only the sales comparison approach to value, mainly because of the subject's multi-story design and age of the various buildings. Salisbury calculated the subject's size to be 156,787 square feet of building area. Brorsen calculated the subject size to be 184,255 square feet of building area.<sup>10</sup> The Board finds the best evidence in this record of the subject's size is contained in the appraisal report presented by Brorsen. Salisbury's estimate of the subject's size was taken from records submitted by the appellant, a random sampling of verification measurements and estimated using GIS photos. Salisbury noted in his cover letter, the spreadsheet records included basement area; however, Salisbury subtracted the basement area from his calculations. Brorsen testified that he physically measured the perimeter of the buildings on two occasions. Brorsen further testified that he also obtained information and assessment data and compared the information which indicated size and matched what he could to his physical measurements. In some cases they matched and in some cases they did not. Brorsen testified that the older buildings were exactly right on what the property record cards indicated while the size of the newer buildings was not disclosed, so he had to physically measure the new dock and the new warehouse. Brorsen also calculated that the subject contained 70,700 square feet of basement area that he did not include in his calculation of price per square foot estimate. Brorsen testified that the basement area was really only under the original, older sections, and was used for minor storage or for location of heating equipment. Further, the Board examined the property record cards for a determination of the subject's size, however, the Board finds the property record cards failed to include adequate information. Therefore, for purposes of this decision, the subject is considered to contain 184,255 square feet of above ground building area.

Both appraisers developed the sales comparison approach to value and gave primary weight to this method in estimating the market value of the subject property. The courts have stated that where there is credible evidence of comparable sales these sales are to be given significant weight as evidence of market value. In Cook County Board of Review v. Property Tax Appeal Board, 384 Ill.App.3d, 472, 480 (1<sup>st</sup> Dist. 2008) the court stated that, "in the absence of market value set by a contemporaneous arm's-length sale, "[t]he sales comparison approach . . . is the preferred method and should be used when market data [are] available." In Willow Hill Grain, Inc. v. Property Tax Appeal Board, 187 Ill.App.3d 9 (1989), the court held that of the three primary methods of evaluating property for the purpose of real estate taxes, the preferred method is the sales comparison approach.

In determining the correct assessment for the subject property, the Property Tax Appeal Board examined the sales presented by the respective appraisers. Salisbury utilized six comparable sales and four comparable listings. The sales and listings occurred from August 2001 to November 2006 for prices ranging from \$320,000 to \$2,600,000 or from \$0.23 to \$6.84 per square foot of building area. Brorsen utilized six sales located in Kankakee or Peotone that sold from November 1999 to August 2006 for prices ranging from \$825,000 to \$3,250,000 or from \$9.02 to \$23.92 per square foot of building area. The board of review did not present evidence

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<sup>10</sup> Appellant was ordered to provide the spreadsheet delivered to its appraiser, J. Edward Salisbury in determination of the subject's size.

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regarding the subject's value, but rather, deferred to the intervenors' evidence. The Board gives little weight to Salisbury's sales #1, #2, #3 and #4 based on their dissimilar location, date of sale, size and/or land area, when compared to the subject. In addition the Board gave less weight to Brorsen's improved sales because they did not include multi-story industrial buildings; all had a land to building ratio higher than the subject; all had a weighted age less than the subject; and none had 19 buildings, similar to the subject. The Board finds the best market value indicators in this record of the subject is Salisbury's comparable sales #5 and #6 and comparable sale listings #1 through #4. The sales occurred in April 2002 and May 2004 for \$2.79 and \$4.36 per square foot of building area, respectively, including land. The listings ranged from \$2.33 to \$6.84 per square foot of building area, including land. The subject's assessment reflects a market value of \$3,255,439 or \$20.76 per square foot of building area, including land, which is above the range of values reflected by the best comparables in this record on a square foot basis. After considering adjustments to the comparables for differences when compared to the subject, the Board finds the subject's assessment is not supported by the testimony and/or evidence contained in this record.

Both appraisers and the board of review agreed the subject's assessment should be reduced. Further, both appraisers agreed that the subject's market value in 2006 was the same for 2007. After consideration of the similarities and differences in the sale data contained herein when compared to the subject, the Board finds the subject's assessment is excessive. Based on the evidence herein and on the testimony and credibility of the witnesses, the Board finds a reduction in the subject's assessment is warranted.

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